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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

17 CR 630 (ER)

6 MARK S. SCOTT,

7 Defendant.  
-----x

8 New York, N.Y.  
9 November 20, 2019  
10 9:00 a.m.

11 Before:

12 HON. EDGARDO RAMOS,

13 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN,  
16 United States Attorney for the  
17 Southern District of New York  
18 CHRISTOPHER DiMASE  
19 NICHOLAS FOLLY  
20 JULIETA V. LOZANO  
21 Assistant United States Attorneys

22 COVINGTON & BURLING LLP  
23 Attorneys for Defendant  
24 BY: ARLO DEVLIN-BROWN  
25 KATRI STANLEY  
-AND-  
DAVID M. GARVIN

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1 (Jury not present)

2 THE COURT: Who will be doing the closing for the  
3 government?

4 MR. FOLLY: I will, your Honor.

5 MR. DEVLIN-BROWN: Your Honor, I believe there are a  
6 few outstanding exhibits the defense is seeking to admit. A  
7 couple there are no objections to but a couple there are.

8 THE COURT: OK.

9 MR. DEVLIN-BROWN: So maybe we can go through those,  
10 if your Honor wishes.

11 THE COURT: I'm ready when you are.

12 MR. DEVLIN-BROWN: All right. So one of them is  
13 Defendant's Exhibit 519 which is the e-mail from Robert  
14 Courtneidge to Mark Scott just attaching OneCoin Roadmap  
15 Version 1.0. I can hand it up if your Honor wants to take  
16 another look but it's just a matrix of projects on OneCoin.

17 Not offered for the truth. Offered to show that Mark  
18 Scott had some awareness that Robert Courtneidge was working on  
19 OneCoin-related matters.

20 We really don't have much of that in the record. We  
21 have that cryptocurrency report being forwarded. This shows he  
22 had somewhat broader awareness and it's relevant to his state  
23 of mind.

24 This is one where the government has repeatedly I  
25 think asked to think about it more and they've thought about it

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1 fully and now still don't want it.

2 Do you want a copy?

3 THE COURT: Sure.

4 Mr. DiMase.

5 MR. DiMASE: Judge, this goes back to our concern that  
6 we articulated early in the trial about a sideshow that may be  
7 confusing and sort of an -- and off the main topic of this  
8 trial for the jury. The involvement of Mr. Courtneidge and his  
9 state of mind is not what is at issue in this trial. And we  
10 think that this kind of opens up a can of worms about what --  
11 how Mr. Courtneidge fit in. And I would say if this does come  
12 in we would plan a very brief rebuttal to put in several  
13 e-mails regarding Mr. Courtneidge's state of mind. Because if  
14 the jury is going to see that he's providing some information  
15 like this to Mr. Scott they should also understand that he had  
16 knowledge himself that OneCoin was likely fraudulent. That  
17 would be very brief. It wouldn't require a witness. But it  
18 sort of underscores the point that this is a sideshow and it  
19 should be excluded under 403.

20 MR. DEVLIN-BROWN: Just briefly, your Honor.

21 I think this is not a can of worms; it's one worm. We  
22 were very selective about which Robert Courtneidge/Mark Scott  
23 e-mails we wanted to introduce. This is just the bare minimum.  
24 It just shows he had some awareness Robert Courtneidge was  
25 working on these matters.

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1                   Mr. DiMase's representation that he might then put in  
2 e-mails without Mark Scott about Mr. Courtneidge, we have a  
3 bunch of those too. I think they're overall helpful to us.

4                   I think for Mr. DiMase to say that now on the verge of  
5 summations when he's been thinking about this e-mail and  
6 mulling it over for several days, I don't think it would be  
7 appropriate to, this one thing comes in and then we have a lot  
8 of e-mails between Courtneidge and Ruja Ignatova and Mr. Scott.

9                   MR. DiMASE: To be clear we're talking about two  
10 e-mails in rebuttal, not all of these e-mails. And we've been  
11 saying this from the beginning that we had e-mails, we even  
12 passed them to the Court at the beginning of the trial, that  
13 show Mr. Courtneidge's knowledge that OneCoin was likely  
14 fraudulent and was involved in money laundering.

15                  If the defense wants to rely on things that  
16 Mr. Courtneidge shared with Mr. Scott it is very relevant at  
17 that point for them to know that Mr. Courtneidge was involved.  
18 And it would be very limited. Just two e-mails. But that sort  
19 of, again, underscores the point of this whole issue with  
20 Mr. Courtneidge.

21                  THE COURT: I'll let them in. Defense 519.

22                  MR. DEVLIN-BROWN: Does your Honor have a ruling on  
23 Mr. DiMase's application, because if the non-Mark Scott e-mails  
24 are coming in with Mr. Courtneidge, I think he's picking two  
25 that are selective and may incorrectly suggest that

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1 Mr. Courtneidge knew there was a problem.

2 There's some e-mails early on where people tell him:  
3 OneCoin, have you heard about it on the internet? You have no  
4 idea.

5 But then there's other e-mails that show him doing  
6 work for months and months and months.

7 We would identify the ones we want to put in, if we're  
8 opening that door to stuff that Mr. Scott's not even on.

9 MR. DiMASE: Mr. Devlin-Brown is opening that door,  
10 not the government. We only plan to put in two e-mails. One  
11 of them is very much not what Mr. Devlin-Brown has described.  
12 It's pretty clear that Mr. Courtneidge is aware that money  
13 laundering is going on. It's highly relevant for the jury to  
14 understand Mr. Courtneidge's state of mind if they're going to  
15 rely on him to show that Mr. Scott's state of mind was innocent  
16 because he was speaking with Mr. Courtneidge.

17 We don't need to make this a mini-trial. If what  
18 Mr. Devlin-Brown wants to do is bring in even more e-mails,  
19 then that further underscores the 403 concern that the  
20 government has.

21 THE COURT: I'll let this one in. And allow the  
22 government if they wish to put in those two but I think we  
23 should leave it at that if you want to put it in.

24 MR. DEVLIN-BROWN: Let me look at the two and we'll  
25 see.

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1           THE COURT: Very well. Do you want this back?

2           MR. DEVLIN-BROWN: Not especially.

3           We do have two more that we have a dispute with and I  
4 can hand those up to the court.

5           THE COURT: OK.

6           MR. DEVLIN-BROWN: They are Exhibits 439 and 442,  
7 Defense Exhibits.

8           THE COURT: Mr. DiMase.

9           MR. DiMASE: Your Honor, the government's position is  
10 these two e-mails Defense Exhibits 442 and -- I'm sorry, 439  
11 and 442 are littered with inadmissible hearsay to the  
12 defendant's own self-serving statements in many cases very  
13 obviously offered for the truth. If the defendant wants to  
14 take the stand and testify about his interactions with  
15 Ms. Ignatova, he's of course free to do that but he can't  
16 substitute his testimony with this inadmissible hearsay in  
17 these two exhibits when they're offered by him for their truth.  
18 So the government objects to the admission of these two  
19 exhibits.

20           MR. DEVLIN-BROWN: Our rationale, your Honor, is that  
21 they're not being offered for the truth. What this sort of  
22 shows here is kind of a breakup between Mr. Scott and  
23 Ms. Ignatova. The government, I understand they have far  
24 broader hearsay avoiding powers, you know, has put in lots of  
25 stuff about sort of the end stage of the relationship between

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1       Mark Scott and Ruja Ignatova. What's important here and why  
2 it's not being offered for the truth is what it's being offered  
3 for is what each side is telling the other. And I think it's  
4 significant that Mark Scott is communicating to Ruja Ignatova  
5 things in the nature of you're not giving me what I need to do  
6 this right. Whether he believes that in his heart of hearts or  
7 not, that's what he's telling the person who's been sending him  
8 company information that the government says is indicative of  
9 money laundering.

10           The same goes back in the other direction when Ruja  
11 Ignatova is telling Mark Scott she's not happy with him for not  
12 moving quickly enough, for not doing things that she believes  
13 needs to be done. It's not whether in her heart of hearts  
14 she's happy or what her reasons are but that she's  
15 communicating that to Mark Scott and communicating -- so when  
16 you take those two sides you have one person saying,  
17 essentially Mr. Scott saying I need to do this right, I need to  
18 do this more, and someone else pushing back and saying well,  
19 too bad, do it my way or the highway. And I think it's  
20 relevant for that.

21           MR. DiMASE: Your Honor, may I just say just for the  
22 record Defendant's Exhibit 439 contains statements like: You  
23 stepped it up by bringing Joanna in and things are now better.  
24 I have fixed the timing issue for smaller fund transfers by  
25 continuously leaking capital to Ireland. Now -- and then in

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1 Defendant's Exhibit 442 he says things like: IG should be done  
2 this week. The brokers are conducting deep KYC and I have  
3 Irish and Cayman counsel assisting.

4 Those are factual statements that are being offered by  
5 the defendant for their truth, not for state of mind, and the  
6 government, again, objects to these exhibits coming in.

7 THE COURT: I'm not letting these two exhibits in.

8 Anything else?

9 MR. DEVLIN-BROWN: I know -- two other things  
10 actually, your Honor. One is we had talked yesterday afternoon  
11 about giving an instruction on the exhibit in which one DMS  
12 employees says that Colm O'Driscoll spoke to Mark Scott who  
13 communicated certain things. I think we all were aligned and I  
14 don't think we did it. So I request that we do that maybe  
15 right when they come out.

16 THE COURT: OK.

17 MR. DEVLIN-BROWN: I think it would be useful,  
18 frankly, to give them the exhibit number or a -- put a screen  
19 shot on so they -- it's been a couple of days.

20 MR. DiMASE: That makes sense, your Honor. We're  
21 happy to put it up and we don't object to the instruction.

22 THE COURT: What exhibit is it?

23 MR. DiMASE: Government Exhibit 533.

24 MR. DEVLIN-BROWN: And the only other thing, your  
25 Honor, is we obviously made a Rule 29 application at the end of

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1 the government's case. It's up to your Honor how much argument  
2 you want to hear on it now. But I would like to raise, if you  
3 don't mind, at least the bank fraud issue.

4 THE COURT: Very well.

5 MR. DEVLIN-BROWN: We move it on both counts.

6 THE COURT: Well we have ten minutes, so.

7 MR. DEVLIN-BROWN: So --

8 MR. DiMASE: Before we get to that may I ask  
9 Mr. Devlin-Brown one thing?

10 (Counsel confer)

11 MR. DEVLIN-BROWN: Before we get to that as well,  
12 having reviewed Mr. DiMase's selection of Mr. Courtneidge's  
13 e-mails, which we really don't think are complete, we don't  
14 want to open that door either. We won't offer Defendant's  
15 Exhibit 519.

16 THE COURT: Very well.

17 You wanted to be heard on the bank fraud?

18 MR. DEVLIN-BROWN: Yes.

19 So, your Honor, we've always had concerns about the  
20 bank fraud statute in the jury's mind despite, of course, your  
21 Honor's instructions, becoming sort of a money-laundering-like  
22 statute where the benefit to the government on bank fraud is  
23 you don't have to prove that the reason behind any false  
24 statement of Mr. Scott's was to conceal what he knew was  
25 OneCoin criminal money, right. It can be any sort of false

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1 statement made to induce a bank to return -- to get funds from  
2 a bank or a customer of a bank. So there is a sort of  
3 pernicious thing that we worry about a little bit there, where,  
4 oh, this mission statement to Apex, you know, plagiarized from  
5 the internet, a few things are off there, don't worry about  
6 whether that proves Mr. Scott knew that the money coming from  
7 OneCoin was criminal because, you know what, some version of it  
8 made it to DMS Bank and therefore it is bank fraud.

9 So that's why we have a concern. The government's  
10 proof just hasn't been there on bank fraud and it hasn't been  
11 there on a number of elements.

12 But the thing that really gives concern is evidence  
13 that Mr. Scott joined a conspiracy -- doesn't have to know all  
14 the details, of course -- he has to join a conspiracy, the  
15 object of which is to defraud an FDIC insured bank or to obtain  
16 money or property from an FDIC insured bank account based on  
17 misrepresentations, deception, etc.

18 And the government's theory, it was a little alarming  
19 the other day in the charge conference, because the  
20 government's theory on that has varied. The bank fraud count  
21 was added a month before indictment. We requested particulars.  
22 The government identified three transactions, two at  
23 Sabadell one at Morgan Stanley -- sorry. They identified the  
24 Sabadell transaction, Morgan Stanley and DMS, reserving their  
25 perceived right to prove other aspects of the bank fraud.

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1           At the charge conference they said they may argue he  
2 had knowledge of the bank -- supposed bank fraud of OneCoin  
3 victims saying the money was for educational packages. There's  
4 been zero evidence, zero on that theory. I certainly don't  
5 think they should be able to argue that.

6           Then they've suggested -- again this surprised us at  
7 trial -- that another theory of bank fraud was the iCard  
8 transaction at Locke Lord that Gilbert Armenta was sending  
9 money into Locke Lord in order to launder it out to Ruja  
10 Ignatova.

11           When we saw that occurred at trial we went through  
12 what are hundreds and hundreds of pages of Gilbert Armenta 3500  
13 material. Gilbert Armenta, as we understand it, has a  
14 cooperation agreement. He had some issues with it. His bail  
15 has been revoked. I don't know the full status. But we saw in  
16 the 3500 material at the bottom of one page a note which said  
17 Gilbert Armenta -- I'm paraphrasing, I could perhaps get the  
18 exact quote if it's helpful -- but in sum and substance that  
19 Gilbert Armenta did not believe he was using Locke Lord and the  
20 iCard transaction to launder money for Ruja Ignatova.

21           That seems to be the only statement we could find. We  
22 raised that with the government. They said what you have is  
23 what there is. But that gives us concern that apparently their  
24 cooperator has doubts about that transaction.

25           Then let me just go -- and I don't think there's any

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1 evidence that Mr. Scott, to the extent there was bank fraud on  
2 that transaction by Gilbert Armenta had any knowledge of it.

3 So then that leaves us, your Honor, with what they  
4 originally started with which is the two DMS -- sorry, the  
5 Sabadell and Morgan Stanley transactions and then DMS.

6 Oh, it wasn't mentioned? Sorry. Just the  
7 Sabadell and Morgan Stanley transactions.

8 So Sabadell and Morgan Stanley, the theory seems to be  
9 that Gilbert Armenta made false representations to those banks  
10 to encourage them to release money that he was transferring to  
11 the Fenero Funds. It's pretty thin, not sufficient evidence  
12 that Gilbert made false statements. There's notes and call  
13 logs. The Morgan Stanley witness didn't have an independent  
14 memory. But putting that to one side, there is zero evidence  
15 that Mr. Scott had any communications with Mr. Armenta that  
16 could even circumstantially be argued to support an inference  
17 that Mr. Scott had some knowledge or awareness of a goal to lie  
18 to those banks. And I think what we just saw in the last two  
19 days actually negates whatever circumstantial argument you  
20 could make. I mean it's proven now that Gilbert Armenta not  
21 only didn't bring Mr. Scott in on exactly what he was doing  
22 with Sabadell Bank. He sent him a false bank letter from  
23 Sabadell Bank and false wire transfers. So that's not there.

24 The DMS theory seems to be that DMS was a customer of  
25 Bank of New York Mellon. Mr. Scott somehow caused fraud

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1 through -- on Bank of New York Mellon by inducing them  
2 indirectly through DMS to allow DMS to make payments through a  
3 correspondent banking relationship. I don't know that that  
4 even amounts to bank fraud. I don't think we've heard anything  
5 about whether DMS actually had a bank account with Bank of New  
6 York Mellon where money would have flowed out of so it could be  
7 money from a customer of the bank. But there's certainly no  
8 evidence that Mr. Scott had anything to do with that and the  
9 communications that your Honor is about to give an instruction  
10 on happened months after the transactions.

11 THE COURT: Let me hear from the government because we  
12 have two minutes.

13 MR. DiMASE: Judge, I won't make this long. Viewing  
14 the facts in the light most favorable to the government there's  
15 plenty of evidence here to permit a rational jury to find that  
16 the elements had been met. This entire conspiracy was about  
17 lying to banks in order to get funds through the banks. That  
18 does have some overlap with the money laundering conspiracy.  
19 But there were FDIC insured banks. Mr. Armenta's involvement  
20 necessitated lying to banks. Of course he knew that he  
21 couldn't say OneCoin money when he was sending investments to  
22 Fenero and he even got a subscription agreement from the  
23 defendant, an investment subscription agreement. So, of  
24 course, Mr. Scott knew that Mr. Armenta was going to lie to the  
25 banks whether or not there was specific conversation about it.

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1 Much in conspiracy -- conspiratorial agreements is left unsaid  
2 as the court will instruct the jury. And this is a very clear  
3 example of that.

4                 With BNY Mellon there's a U.S. dollar account right  
5 here in New York through which a number of U.S. dollar  
6 transactions flowed straight from Fenero and Mr. Scott was the  
7 one who provided the information, the wire details that helped  
8 those transactions pass through the bank. Whether it's his  
9 account or DMS's correspondent account in New York is besides  
10 the point. The defendant need not lie to the bank directly.  
11 The defendant can lie to somebody else and know that that will  
12 be communicated to the bank and that is sufficient.

13                 There are other arguments on the iCard and the  
14 investors but I don't think it's necessary to get into those  
15 here. I think there's more than enough evidence to let this go  
16 to the jury.

17                 THE COURT: Certainly relative to the evidence  
18 concerning the money laundering conspiracy. The evidence  
19 concerning the bank card conspiracy is I think much less. But  
20 viewing all of the evidence in the light most favorable to the  
21 government I think that there is enough to go to a jury. So  
22 the Rule 29 with respect to the bank fraud account is denied  
23 obviously without prejudice to renew it after any verdict.

24                 Is the jury here? And is Ms. Julian here?

25                 Is my most fervent hope that the presentation of

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1 evidence this morning will not be looking at a lot of e-mails  
2 that we've seen ten times already during the trial. But that's  
3 just my hope.

4 MR. DiMASE: Your Honor, I have about five documents  
5 to show the witness on the stand and it will be out.

6 MR. DEVLIN-BROWN: OK.

7 (Continued on next page)

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Julian - Cross

1 (Jury present)

2 THE COURT: Ladies and gentlemen of the jury, good  
3 morning. Thank you, as always, for being so prompt.

4 We will now continue with the cross-examination of  
5 Ms. Julian.

6 And Ms. Julian you are reminded that you are still  
7 under oath.

8 Mr. DiMase.

9 MICHELLE JULIAN,

10 called as a witness by the Defendant,

11 having been previously sworn, testified as follows:

12 CROSS-EXAMINATION

13 BY MR. DiMASE:

14 Q. Good morning.

15 A. Good morning.

16 Q. I just want to cover a couple of very brief topics with you  
17 this morning. Do you recall that yesterday you spoke about --  
18 you testified about some e-mails involving a transaction  
19 through the Locke Lord escrow account here in the United  
20 States?

21 A. Yes.

22 Q. And that related to the iCard matter at Locke Lord. Do you  
23 recall testifying about that?

24 A. Yes.

25 MR. DiMASE: Let me pull up Government Exhibit 1406.

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Julian - Cross

1                   Can we pull up Government Exhibit 1374 first.

2 Q. You didn't see this e-mail during your testimony yesterday,  
3 correct?

4 A. Correct.

5 Q. This is an e-mail from Mark Scott to Gilbert Armenta on --

6 A. Yes.

7 Q. -- February 3, 2016?

8 A. Yes.

9 Q. Do you see that?

10                  And so that would have been the day after the money  
11 came to Locke Lord's escrow account, correct?

12 A. Correct.

13 Q. And Mr. Scott said to Mr. Armenta, can you read that for  
14 the jury.

15 A. "See below. Wires in. You can also send some for my PL  
16 account in escrow if you like."

17 Q. Then at the bottom of this e-mail it's those two same two  
18 wires that had gone into the Locke Lord escrow account on  
19 February 2 of 2016, correct?

20 A. It appears so.

21 Q. So let's now look at Government Exhibit 1376. And this is  
22 an e-mail dated February 15, 2016 from Mr. Scott to  
23 Mr. Armenta?

24 A. Yes.

25 Q. And could you read the title of that e-mail?

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Julian - Cross

1 A. "And maybe best to communicate on this line about banks  
2 etc."

3 Q. Just to be clear. Did Mr. Scott use his Locke Lord e-mail  
4 address there or a different e-mail?

5 A. He used a different e-mail.

6 MR. DiMASE: Let's go to Government Exhibit 1406.

7 Actually you can pull this one down. I apologize for  
8 that. It's 1405. If you could pull that up Mr. Barile,  
9 please.

10 Q. This e-mail you did see on your direct examination,  
11 correct?

12 A. Correct.

13 Q. And Mr. Devlin-Brown I believe had you read part of the  
14 subject line. Do you remember that?

15 A. Yes.

16 Q. Could you read the last part of that subject line please?

17 A. "My ass on the line on this."

18 Q. Could you read the second sentence of the first paragraph  
19 there?

20 A. "I am trying to help so we have clean documentation."

21 Q. This is an e-mail from Mr. Scott to Mr. Armenta on  
22 February 16 of 2016?

23 A. Correct.

24 Q. And just pulling up Government Exhibit 2621.

25 Now, you don't know where the money came from that

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Julian - Cross

1 funded the two transfers into the Locke Lord account, right?

2 A. Correct. I do not.

3 Q. Just focusing on the left side of this chart, those two  
4 accounts there on this chart, the bottom and top and the UAE,  
5 those are accounts for RavenR, correct?

6 A. Yes.

7 Q. And then it shows money coming into Zala Group?

8 A. Yes.

9 Q. And it shows money flowing from that account to two other  
10 Zala Group accounts?

11 A. Yes.

12 Q. And then those two Zala Group accounts this chart shows  
13 funded the Locke Lord account?

14 A. Correct.

15 Q. And ultimately the money as far as this chart shows winds  
16 up in yet another Zala Group account in the United Emirates,  
17 correct?

18 A. Correct.

19 MR. DiMASE: You can take that down briefly.

20 Q. There is one very brief thing I want to cover.

21 You testified yesterday about the transfers made by  
22 Mr. Armenta to the Fenero accounts. Do you recall testifying  
23 about e-mails in connection with that subject?

24 A. I don't recall specifically the Fenero accounts but if you  
25 could pull up an exhibit, please.

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Julian - Cross

1 Q. To keep it at a higher level. About Mr. Armenta sending  
2 money to Mr. Scott's accounts. Do you recall reviewing some  
3 e-mails about that?

4 A. Yes.

5 Q. And I think Mr. Devlin-Brown asked you if there was  
6 anything in the e-mails that showed Mr. Scott telling  
7 Mr. Armenta what to say. Do you recall answering those  
8 questions?

9 A. I recall the questions, yes.

10 Q. Let me show you Government Exhibit 1126.

11 MR. DiMASE: Actually you can pull that down.

12 Q. You didn't see this e-mail on your direct examination,  
13 correct?

14 A. Correct.

15 Q. This is an e-mail from Mark Scott to Dave Duynhoven and  
16 David Pike?

17 A. Yes.

18 Q. And it's dated July 13, 2016?

19 A. Correct.

20 Q. And it says "executed subscription package Fates Group  
21 LLC."

22 A. Yes.

23 MR. DiMASE: Go to the first page of that document.

24 Q. Is it fair to say that this is an application form for  
25 Fenero Equity Investments LP?

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Julian - Cross

1 A. Yes.

2 Q. And that's an investment agreement between the investor and  
3 the Fenero investment funds in essence?

4 A. It appears so. But the top says application formed,  
5 including additional language.

6 Q. You see information on this first page about approved fund  
7 investment warning and limited partner of the fund and so  
8 forth. Would that help you understand that this is essentially  
9 an investment agreement?

10 A. Can you scroll down?

11 Q. Sure.

12 A. To the next page, please.

13 Q. Is it fair to say that this form describes Mr. Armenta as a  
14 subscriber into the Fenero Funds?

15 A. Yes. It appears so.

16 MR. DiMASE: Can we go to page 15.

17 Q. And Mr. Armenta signed this form?

18 A. Yes.

19 Q. So did Mr. Scott?

20 A. Yes.

21 Q. So would you agree that Mr. Armenta had an understanding  
22 that under the terms of this form he was to be sending money as  
23 investments into the Fenero Funds?

24 MR. DEVLIN-BROWN: Objection.

25 THE COURT: Sustained.

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Julian - Cross

1 Q. Well this form called for Zala Group or Fates Group --  
2 Fates Group to send money into the Fenero Funds as an  
3 investment, correct?

4 A. Possibly, yes.

5 MR. DiMASE: Nothing further, your Honor. Thank you.

6 THE COURT: Any redirect?

7 MR. DEVLIN-BROWN: No, your Honor.

8 THE COURT: Ms. Julian, you may step down.

9 (Witness excused).

10 THE COURT: Mr. Devlin-Brown, do you have another  
11 witness?

12 MR. DEVLIN-BROWN: No, your Honor.

13 There are two exhibits that we previously conferred  
14 with the government about that we'd like to offer into evidence  
15 now and just briefly publish to the jury.

16 THE COURT: Very well.

17 MR. DEVLIN-BROWN: Defendant's Exhibit 281 and 278.

18 THE COURT: Any objection?

19 MR. DiMASE: No, your Honor.

20 THE COURT: Very well. They will be received.

21 (Defendant's Exhibits 281 and 278 received in  
22 evidence)

23 MR. DEVLIN-BROWN: Could we just start with 281,  
24 Ms. Stanley. And this is an e-mail from Mark Scott to David  
25 Pike dated May 26, 2016, subject "Important document for admin

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Julian - Cross

1 KYC re: OneCoin."

2 If we could turn to the next page, Ms. Stanley.

3 This is a document from Locke Lord titled  
4 "Cryptocurrencies and Blockchain Technology Update. Research  
5 Note." Prepared by Robert Courtneidge and Charlie  
6 Clarence-Smith. Maybe just show the table of contents page,  
7 Ms. Stanley, which is the next page.

8 And we can take that off the screen.

9 And then if you could publish Defense Exhibit 278.

10 And this is another e-mail. This one is from Dave von  
11 Duynhoven to Mark Scott dated May 19, 2016 with subject  
12 "Administration Agreement for Fenero II BVI."

13 If we could turn to the next page, Ms. Stanley.

14 And this is a, according to the document an  
15 administration agreement between JP Fund Administration and  
16 Fenero Equity Investments II LP.

17 We can take that off the screen, Ms. Stanley.

18 May we see the Court briefly at sidebar, your Honor?

19 THE COURT: Sure.

20 (Continued on next page)

JBK9SCO1

Julian - Cross

1 (At sidebar)

2 MR. DEVLIN-BROWN: We have nothing further other than  
3 the limiting instruction on 533 and I don't know if your Honor  
4 wishes to put anything on the record with respect to Mr. Scott.  
5 He's not going to testify. Doesn't wish to testify.

6 THE COURT: Did you want me to put something on the  
7 record?

8 MR. GARVIN: I don't think so.

9 MR. DEVLIN-BROWN: I don't think it's necessary. We  
10 can represent we've spoken to him and he's decided.

11 MR. DiMASE: I think it would be appropriate for the  
12 court to allocute him about his decision not to testify; not in  
13 the presence of the jury, obviously. It doesn't have to be  
14 right at this moment. It probably should be before we have  
15 summations. But whether it's before or after the limiting  
16 instruction I don't think that matters.

17 MR. DEVLIN-BROWN: Do you want to call him to sidebar?

18 MR. DiMASE: That's also fine.

19 THE COURT: Is that OK with you?

20 MR. GARVIN: I'd like to do it outside of the presence  
21 of the jury.

22 THE COURT: Maybe what we do is this -- do you have  
23 any rebuttal?

24 MR. DiMASE: No.

25 THE COURT: So maybe we'll break now so that we can

1 JBK9SCO1

2 Julian - Cross

1 set up for the summation and then we'll bring him over to the  
2 sidebar.

3 MR. DEVLIN-BROWN: So we'll just do the limiting  
4 instruction and then we'll rest.

5 (Continued on next page)

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JBK9SCO1

Julian - Cross

1 (In open court)

2 THE COURT: Will the government please put up the  
3 exhibit that you wish me to instruct the jury on.

4 And the particular language.

5 MR. DEVLIN-BROWN: I think it's the second page.

6 THE COURT: Ladies and gentlemen, you may recall that  
7 this exhibit was admitted at the request of the government and  
8 that, like a couple of other exhibits that we discussed before,  
9 this exhibit was not admitted for its truth, rather to show the  
10 effect that it had or didn't have on the folks at BNY Mellon  
11 Bank, OK. So it can be considered for you for that purpose  
12 only.

13 With that, Mr. Devlin-Brown anything else?

14 MR. DEVLIN-BROWN: The defense rests, your Honor.

15 THE COURT: Mr. DiMase, does the government have any  
16 rebuttal?

17 MR. DiMASE: No, your Honor.

18 THE COURT: OK. Ladies and gentlemen, that concludes  
19 the evidentiary portion of the trial. We will now move to  
20 summations.

21 The government will sum up first and then if Mr. Scott  
22 wants to sum he can go after that and if he does provide a  
23 summation then the government can have a rebuttal.

24 But we're going to need just a couple of minutes to  
25 set up the well of the court before that happens. So we're

JBK9SCO1

Julian - Cross

1 going to take a short break and we're going to bring you out as  
2 soon as we're ready.

3 Don't discuss the case.

4 (Continued on next page)

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JBK9SCO1

Julian - Cross

1 (In open court)

2 (Jury not present)

3 THE COURT: Mr. Garvin, do you wish me to address  
4 Mr. Scott directly?

5 MR. GARVIN: Yes, your Honor. That would be  
6 appropriate.

7 THE COURT: OK. Mr. Scott, my understanding from your  
8 attorneys is that you have made a decision not to testify; is  
9 that correct?

10 THE DEFENDANT: That is correct.

11 THE COURT: Obviously this is a very important  
12 decision. I just want to make sure that you have had every  
13 opportunity to discuss this decision with your attorneys. Have  
14 you had that opportunity?

15 THE DEFENDANT: I have, your Honor.

16 THE COURT: And do you understand that you have an  
17 absolute right to testify if you wanted to?

18 THE DEFENDANT: I do.

19 THE COURT: And do you understand that if you do not  
20 testify I will tell the jury that it cannot hold that against  
21 you?

22 Do you understand that?

23 THE DEFENDANT: I do understand that.

24 THE COURT: Do you have any questions about your right  
25 to testify?

JBK9SCO1

Julian - Cross

1           THE DEFENDANT: No, your Honor.

2           THE COURT: Do you want any additional time to discuss  
3 this matter with your attorneys?

4           THE DEFENDANT: No. Thank you.

5           THE COURT: Is there anything else that I should ask,  
6 Mr. DiMase?

7           MR. DiMASE: No, your Honor.

8           THE COURT: Mr. Garvin?

9           MR. GARVIN: No, your Honor.

10          THE COURT: Very well.

11          How long will it take you folks to set up?

12          MR. DiMASE: Five minutes, your Honor.

13          THE COURT: OK.

14          (Recess)

15          (Continued on next page)

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JBK3SCO2

Summation - Mr. Folly

1 (In open court)

2 THE COURT: Let's get the jury.

3 (Jury present)

4 THE COURT: Mr. Folly.

5 MR. FOLLY: In September 2018, when Mark Scott was  
6 arrested and interviewed by federal agents about OneCoin and  
7 about Ruja, he lied. When he was asked point blank if OneCoin  
8 and Ruja had anything to do with his investment funds, he said  
9 no. No. Those were his exact words, ladies and gentlemen.  
10 Those were the words of this man, Mark Scott, the defendant,  
11 after he was caught.

12 He lied through his teeth. And he lied then because  
13 he knew what he had known all along: OneCoin was a fraud, and  
14 the defendant had laundered \$400 million of that fraud scheme  
15 money right through his fake investment funds.

16 So Mark Scott went right back to his OneCoin playbook.  
17 He told lie after lie so that he could hide any connection  
18 between his fake investment funds and OneCoin and Ruja.

19 You heard about so many of those lies at this trial.  
20 The lies to banks, the lies about fake investors, investors  
21 that Scott claimed had nothing to do with OneCoin and nothing  
22 to do with Ruja. The lies about fake investments and the fake  
23 paperwork that he used to try and make it all look real.

24 Scott lied every step of the way because he knew that  
25 the money in his funds was from criminal activity.

JBK3SCO2

Summation - Mr. Folly

1                   Ladies and gentlemen, this summation is our  
2 opportunity to walk through the key evidence that you've seen  
3 and you've heard over the last few weeks and to show you how  
4 all that evidence proves that the defendant is guilty as  
5 charged. And ladies and gentlemen, the evidence in this case  
6 is overwhelming.

7                   Before we jump into the evidence, I'm going to start  
8 by giving you a brief overview of how we're going to review  
9 that evidence here today. First, we'll talk briefly about the  
10 charges in this case; second, we'll talk about what's not  
11 really in dispute in this case at all, OneCoin was a massive  
12 fraud scheme; third, we'll talk about all the reasons you know  
13 that Scott knew that the money he was laundering was dirty,  
14 that it was from criminal activity; and fourth, we'll talk  
15 about the lies that Scott and his conspirators told to banks to  
16 get them to move that money. Lies that they had to tell for  
17 this money laundering operation to work.

18                  Now, before we get to the evidence, let me take a  
19 brief moment and talk to you about the charges in this case.  
20 There are two charges, and Judge Ramos will give you detailed  
21 instructions about the law a little bit later, and you should  
22 follow those instructions that he gives you.

23                  But in talking about the crimes that are charged here,  
24 my hope is to give you a roadmap about what's in dispute in  
25 this case, and how the evidence fits together to show that the

JBK3SCO2

Summation - Mr. Folly

1 defendant is guilty of both the crimes he is charged with.

2                   The first charge is money laundering conspiracy. And  
3 as Judge Ramos will explain to you later, the essence of the  
4 money laundering charge is that the defendant agreed to launder  
5 money that he knew came from criminal activity. As I expect  
6 you will also hear, a key part of the money laundering is that  
7 it is designed to conceal or disguise the source or the  
8 ownership of the money from that unlawful activity, like  
9 through a fake investment fund as the defendant did in this  
10 case.

11                  The second charge is bank fraud conspiracy. In  
12 essence, that means that the defendant entered into an unlawful  
13 agreement to get money from federally insured banks through  
14 lies.

15                  Now, ladies and gentlemen, for each of these crimes,  
16 you must also find that there is venue in this district. And  
17 all that means is that something happened in Manhattan or  
18 somewhere else in the district, in furtherance of the money  
19 laundering and the bank fraud charges. You saw examples of  
20 that throughout this trial. For example, Linda Cohen, the  
21 victim who invested over \$20,000 into the OneCoin fraud scheme,  
22 after her son had told her about it, she wired money from a  
23 bank right here in Manhattan. And you also learned that  
24 correspondent banks were used in New York to wire money on  
25 behalf of Scott's fake investment funds. Any of those

JBK3SCO2

Summation - Mr. Folly

1 transactions is enough to establish venue in this district.

2 Now, I want to focus first on what's not in dispute in  
3 this case. OneCoin was a massive fraud scheme. It was a fraud  
4 scheme like few others. The defense basically conceded this in  
5 their opening, and you saw so much evidence of that all  
6 throughout this trial. And ladies and gentlemen, that's where  
7 this story really begins.

8 You saw e-mails between the two co-founders of  
9 OneCoin, Ruja Ignatova and Sebastian Greenwood, back in 2014  
10 and 2015 as they came up with this scheme. The concept was  
11 very simple: Tell everyone that OneCoin is going to be the  
12 next bitcoin, that it's the next big cryptocurrency, that  
13 everyone who invests is going to get rich. Get those victims  
14 to invest big, and then take the money and run.

15 And ladies and gentlemen, that's exactly what they  
16 did. Millions of victims, victims like William Horn and Linda  
17 Cohen who you heard from at this trial. Victims who were  
18 saving for their retirement, victims who were saving for their  
19 grandkids' college. Victims who invested billions of dollars  
20 in this fraud scheme. OneCoin's entire business was fraud, and  
21 ladies and gentlemen, business was very, very good at OneCoin.

22 But OneCoin also had a very big problem on its hands.  
23 The OneCoin scam, as big as it was, and with all those victims,  
24 was actually pretty obvious, and banks caught on very quickly.  
25 And they did not want to be involved with doing transactions

JBK3SCO2

Summation - Mr. Folly

1 involving large amounts of money from a big fraud scheme.

2                   And you'll remember towards the very start of this  
3 trial, you heard about this problem from Ruja's brother  
4 Konstantin. He explained to you that if banks knew that the  
5 money was coming from OneCoin, they would freeze those bank  
6 accounts. That's why OneCoin needed money launderers. And  
7 you'll also remember from these e-mails that Ruja and Sebastian  
8 were desperately trying to come up with a solution. It was a  
9 huge mess.

10                  One of those solutions was Gilbert Armenta. You see  
11 that right here, that was Ruja's boyfriend and that was her  
12 international money launderer. But that simply was not enough,  
13 Gilbert Armenta was not enough to fix this problem. Ruja  
14 needed a better way. She needed a structure that she could use  
15 to hide OneCoin from the banks. And by the middle of  
16 September 2015, as you see in this e-mail, Ruja had her eye on  
17 a solution. She had found someone who would help her with her  
18 money laundering structure.

19                  That someone, ladies and gentlemen, was Mark Scott.  
20 And that structure was the Fenero investment funds.

21                  Within a couple of weeks of that e-mail, Gilbert  
22 Armenta introduced Mark Scott to Ruja. Here's that  
23 introduction e-mail. You'll remember Gilbert was Ruja's money  
24 laundering boyfriend, the same one who was arrested by the FBI  
25 and began making secret recordings against Ruja. Armenta had

JBK3SCO2

Summation - Mr. Folly

1 also been a client of Mark Scott's for a decade. So Armenta  
2 made that introduction, and as you see in this e-mail, he told  
3 Mark Scott "treat Ruja like family."

4 But before Scott could do anything, he needed that  
5 structure. He needed a vehicle he could use to launder Ruja's  
6 money. So by early 2016, Scott tells Ruja he's ready. He's  
7 ready to move.

8 Scott had figured out a solution. Transfers of fraud  
9 money disguised as investments. That was Scott's solution.  
10 Now why investment funds? Scott was a trained lawyer in this  
11 very area. He was a partner at a law firm. Scott knew how to  
12 do this. Scott knew how to make all of this look like it was  
13 real. So that's why Scott chose investments as the vehicle he  
14 would use to launder Ruja's money.

15 So Scott got to work. Trips to the Cayman Islands,  
16 trips to the BVI, trips to Ireland, trips to Bulgaria, trips to  
17 London. Scott was very busy. He got those investment funds  
18 set up quickly, and Ruja's OneCoin money began pouring in.  
19 Millions, tens of millions, and then hundreds of millions of  
20 dollars went into those investment funds. It was all OneCoin  
21 money, and it was all Ruja's money.

22 On the other end, Scott sent the money wherever Ruja  
23 wanted it. Ruja needed that clean money. You heard about that  
24 from her brother Konstantin. She had mansions all over the  
25 world. She had penthouses in London with indoor swimming

JBK3SCO2

Summation - Mr. Folly

1 pools. She had \$20 million property in Dubai. Ruja wanted to  
2 spend that fraud money, so she needed Scott to clean it. And  
3 like the fraudsters at OneCoin, Scott was paid big, big money.  
4 He got that money for taking the risk of laundering hundreds of  
5 millions of dollars. By the end of this, he got \$50 million  
6 just for laundering Ruja's money.

7 Let's back up for a moment and focus on what's really  
8 in dispute in this case. For the money laundering charge,  
9 there is one key issue that is in dispute. Did Mark Scott know  
10 that Ruja's money came from unlawful activity? That is the key  
11 issue in dispute for the money laundering charge. And the  
12 answer, ladies and gentlemen, is yes. Mark Scott absolutely  
13 knew that all that money came from unlawful activity.

14 The answer is as obvious, ladies and gentlemen, as  
15 this OneCoin fraud scheme. Fabricated records, crypto phones,  
16 sham investment agreements, fake loans, e-mails to Mark Scott  
17 telling him that OneCoin was under criminal investigation by  
18 the City of London police. Ladies and gentlemen, there are so  
19 many reasons, you can take your pick. But today we're just  
20 going to focus on seven key reasons that Mark Scott knew that  
21 that money came from unlawful activity.

22 First, let's start with the lies. Scott lied over and  
23 over again in so many ways. He lied because he had something  
24 to hide, ladies and gentlemen. And let's start with the  
25 biggest lie of all. The lie that Fenero, this investment fund,

JBK3SCO2

Summation - Mr. Folly

1 was actually a real investment fund. Total lie, ladies and  
2 gentlemen. This was a front company and it was being used to  
3 hide two key things: One, that all this money came from the  
4 OneCoin fraud scheme. And two, that all this money belonged to  
5 Ruja.

6 Mark Scott said it himself right here in this e-mail.  
7 This is what all the smoke and mirrors were about. This was  
8 just a facade. This was not a real investment fund. Smoke and  
9 mirrors.

10 And let's go to the very beginning of this, ladies and  
11 gentlemen. Remember the mission statement? The one Scott sent  
12 to all those banks? One he sent to his fund administrator?  
13 Total lie. It was literally copied and pasted from a website  
14 online. The defendant's mission statement was a copy and paste  
15 job.

16 The defendant's so-called track record? Copied and  
17 pasted from Google. That actually makes sense, ladies and  
18 gentlemen. Mark Scott wasn't an experienced investment  
19 manager, and this was all just for show. It was to make it  
20 look like this was a real investment fund. So Scott hopped on  
21 Google and he copied and pasted his mission statement. He  
22 copied and pasted his track record. That's what he did.

23 And while we're on the subject of this mission  
24 statement, let's look at another lie in the mission statement.  
25 This will become a theme. The lie that Scott had a bunch of

JBK3SCO2

Summation - Mr. Folly

1 investors that were lined up for this investment fund.

2                   Ladies and gentlemen, the money was coming from one  
3 person, and her name was Ruja Ignatova. No middle market  
4 companies, no rich families. One person, Ruja Ignatova. This  
5 was all just a facade to make it look like Mark Scott had real  
6 investors.

7                   And look how he describes this when he's talking to  
8 his partner David Pike. You see it right here in this e-mail.  
9 This was a game. That's what Scott and his partner David Pike  
10 called it. A game. And like I said, Scott, he played this  
11 game very, very well.

12                  Now the purpose of this game, the purpose of all these  
13 smoke and mirrors, as I've said, was to hide OneCoin and to  
14 hide Ruja. That's what this all depended on. And there's so  
15 many examples of this, ladies and gentlemen. Let's just look  
16 at one example. Ruja telling Scott think about the structure  
17 needs to be able to bank and get accounts. Nothing to do with  
18 investing. Nothing to do with investments. Ruja did not care  
19 about investing. That wasn't her problem. That wasn't her  
20 concern. She cared about cleaning hundreds of millions of  
21 dollars. That was her concern. Needs to be able to bank and  
22 get accounts.

23                  And let's just take a step back for a moment, ladies  
24 and gentlemen. Why is this even a question or a concern?  
25 Banking and getting accounts. If this was about making real

JBK3SCO2

Summation - Mr. Folly

1 investments, why would Ruja Ignatova be concerned about banking  
2 and opening up accounts? That makes no sense. That only makes  
3 sense because this was all just a front. Because Ruja's money  
4 was dirty, it was from a fraud scheme, so her top priority was  
5 banking, opening up bank accounts, and being able to clean all  
6 this money. Not investing.

7 Let's look at this next one. Here Ruja says to Scott,  
8 "If I want to keep about 50 million euros on your accounts, how  
9 much will you charge me?" Once again, ladies and gentlemen,  
10 nothing to do with investments whatsoever. This is about money  
11 laundering. This is about getting Ruja's money from accounts  
12 that might get closed to clean accounts that can withstand  
13 scrutiny from banks.

14 You heard about this from Donald Semesky, the money  
15 laundering expert. He explained to you this concept of taking  
16 money from illegal activity and distancing it from that illegal  
17 activity. Layering. Giving it appearance that all the money  
18 comes from a legitimate, lawful source, so that Ruja on the  
19 other side can take that money and do what she wants with it.

20 And ladies and gentlemen, Scott was not confused about  
21 any of this. You can see that right here in this e-mail. He  
22 understood exactly what his job was. He understood what he was  
23 tasked with. "I am setting up your transfers as investments  
24 into registered investment funds." Again, nothing to do with  
25 investments. Scott isn't talking to Ruja about some great

JBK3SCO2

Summation - Mr. Folly

1 investment he's found in the next Apple or the next Facebook.  
2 He's talking to Ruja about how to disguise her fraud money as  
3 investments into a fake investment fund. Nothing to do with  
4 real investments. Those are literally his words in this  
5 e-mail. "I'm setting up your transfers as investments."

6 Now, we'll come back to the subject of hiding the  
7 OneCoin connection. That's a big part of this case. Defense  
8 counsel suggested to you during their opening statement and  
9 during the cross-examination of some of the witnesses that Mark  
10 Scott actually wasn't really hiding the connection to OneCoin.

11 Ladies and gentlemen, the defendant has no burden in  
12 this case. The burden is always with the government, and we  
13 embrace that burden. But when defense counsel makes arguments  
14 like that to you, you are entitled to scrutinize them and think  
15 about them and ask yourselves if they make any sense  
16 whatsoever. And the answer here is clear: Of course Mark  
17 Scott was hiding the connection to OneCoin. Let's just look at  
18 a couple quick examples.

19 Here's Scott asking Ruja "How should we name the  
20 fund?" And look what he says. Basically, it can be anything,  
21 anything not associated with OneCoin. Of course Mark Scott is  
22 hiding the connection to OneCoin.

23 Let's look at another example. "The link to OC will  
24 kill us." The link to OneCoin will kill us. Scott's words,  
25 he's obviously hiding OneCoin. That's the entire point of all

JBK3SCO2

Summation - Mr. Folly

1 of this. Hide OneCoin, hide Ruja, because Mark Scott knows  
2 OneCoin is a fraud scheme, and Ruja is the leader of that fraud  
3 scheme. Scott knows that, and that's why he's desperately  
4 trying to hide that connection.

5 This theme continues. You see that in this e-mail.  
6 Scott says "I have created a structure on one hand, which  
7 creates a super creditworthiness towards the outside which is  
8 needed." Super creditworthiness. Why is Scott talking like  
9 this? Creditworthiness towards the outside? Why does this  
10 need to be said? If Mark Scott, a partner at a top law firm,  
11 is actually creating real investments, why is he talking about  
12 super creditworthiness towards the outside? Because that's the  
13 very point of this. Create a structure that looks real to the  
14 outside, and can be used in secret to launder Ruja's money.

15 Now, like I said, this was the biggest lie of all.  
16 The lie that these were real investment funds and that they had  
17 real investors. IMS, B&N, Irina Dilkinska, Gilbert Armenta.  
18 Those were the people, those were the entities that Scott  
19 claimed were the real investors into his fund.

20 But ladies and gentlemen, these were shell companies.  
21 They were controlled by Ruja, and they were used by Scott to  
22 launder the money.

23 Think about who these companies belonged to on paper.  
24 Frank Ricketts, Irina Dilkinska, Gilbert Armenta. Criminals.  
25 Every one of them. Those were who these shell companies

JBK3SCO2

Summation - Mr. Folly

1 belonged to on paper.

2 Let's start with Frank Ricketts. Konstantin, you'll  
3 remember, told you about Frank Ricketts at this trial. He was  
4 the fraudster who gave Ruja all that advice about how she could  
5 avoid getting arrested. That was Frank Ricketts. He's the one  
6 running IMS, the company that transferred over 100 million  
7 euros straight to Scott's investment funds. That's IMS. Frank  
8 Ricketts.

9 Gilbert Armenta, we've already talked about him. Not  
10 much more needs to be said about him. He was Ruja's  
11 international money launderer.

12 Irina Dilkinska, you heard about her throughout this  
13 entire trial. She was basically running OneCoin's money  
14 laundering department. She had everything but a money  
15 laundering business card. That was Irina Dilkinska. And  
16 that's who is running the fake shell companies that are sending  
17 Scott over 100 million euros.

18 Now there's one more. Zhoulong Cai, the guy who was  
19 supposedly running this company called Star Merchant. Ladies  
20 and gentlemen, he was the so-called director of Star Merchant.  
21 This guy who looks like he's in high school was sending 95  
22 million euros to Mark Scott's investment funds?

23 Ladies and gentlemen, look at this e-mail. Zhoulong  
24 Cai doesn't own a house. Zhoulong Cai doesn't have his own  
25 bank account. It's right there in the e-mail that was sent to

JBK3SCO2

Summation - Mr. Folly

1 Mark Scott. And this is supposedly the real investor that is  
2 sending Mark Scott nearly 100 million euros? Absolutely  
3 ridiculous, ladies and gentlemen. Zhoulong Cai was a nominee.  
4 They were paying this guy to put his name on the paperwork.  
5 Scott knew that, he's right here on this e-mail, Scott  
6 understood that this was all a cover to send Ruja's money  
7 straight to Scott.

8 And remember, Semesky, he explained this concept of  
9 shell companies to you. Money launderers use those companies  
10 to distance the money from its criminal source. Every time you  
11 transfer money through one of these companies, these shell  
12 companies, you transfer the ownership to a new entity. You  
13 hide whose money it really is, and you hide where the money is  
14 really going.

15 Now, ladies and gentlemen, it wasn't just Mark Scott  
16 who was hiding that connection to OneCoin. Everyone involved  
17 in this was hiding that connection and started at the very  
18 first part of this whole chain. OneCoin fraudsters told the  
19 victims don't reveal anything about OneCoin when you send those  
20 wires. Instead, tell banks that you're buying education  
21 packages. Not OneCoins. Education packages. It's right here,  
22 and you heard about this at the trial.

23 From there, ladies and gentlemen, that money, that  
24 money went to Scott's accounts in the Cayman Islands, money  
25 that came straight from OneCoin victims and then to accounts

JBK3SCO2

Summation - Mr. Folly

1 literally all over the world. This is that layering that  
2 Semesky told you about. Distancing the money from its unlawful  
3 source. This, on this map, ladies and gentlemen, this is what  
4 money laundering looks like. This is not what investing looks  
5 like.

6 Now it's pretty obvious, ladies and gentlemen, but I  
7 just want to just emphasize one point about all this money  
8 that's being transferred into the Fenero funds. It's all, all  
9 of it, Ruja's. This is right at the center of Scott's lies.  
10 He hid that. And in case there's any confusion about whether  
11 this money was actually all Ruja's, let's just look at one  
12 example that makes it absolutely clear. Here's this e-mail  
13 involving Mark Scott. It's from Karl Horsburgh. And he sums  
14 it all up. He says basically, I get it. You have these Fenero  
15 Funds that exclusively contain Ruja Ignatova's money. And the  
16 problem is, Ruja cannot appear as the beneficial owner of all  
17 that money. If the banks find out it's Ruja's money, they will  
18 close the accounts.

19 Ladies and gentlemen, this e-mail, sent directly to  
20 Mark Scott, basically sums up the whole problem. All of this  
21 money in Scott's fund was Ruja's, he knew that, he knew it was  
22 from OneCoin, but he lied because he had to solve this problem  
23 for Ruja. He knew she was a fraudster, and had to use his fake  
24 investment funds to clean her money.

25 And ladies and gentlemen, look at the response by

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Summation - Mr. Folly

Ruja. It's telling. She doesn't say What are you talking about? This isn't all my money, it's really Irina Dilkinska's money. It's really Gilbert Armenta's money. I'm so confused, why am I on this? E-mail. That's not what she says at all. She says get me off this e-mail chain. Do not put incriminating things like this in writing. If you want to talk about this, you do it in person, you do it on the crypto phone, but you do not put these types of things in e-mails. That's Ruja's response to that e-mail.

One final point on this, which again, is obvious. Scott also knew the money wasn't just all Ruja's. It was all from OneCoin. Ruja was the founder of OneCoin. That was where she was working. Scott literally took trips to Sofia, Bulgaria and walked right in to the OneCoin office to meet with Ruja. So there's no question Scott knew that all this money was from OneCoin.

He went to that birthday party, ladies and gentlemen, that completely over-the-top event, just like every other OneCoin event. You saw the footage from that right here at this trial. Scott was there at that birthday party. Scott knew all of Ruja's money was from OneCoin.

Ladies and gentlemen, there are so many ways that you know that these were all fake investments, that this was a fake investment fund. But let's focus on the most obvious one of all. Where are the investments? Where are Scott's brilliant

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Summation - Mr. Folly

1 investment ideas that he is getting paid \$50 million to come up  
2 with?

3           Ladies and gentlemen, you saw so many e-mails at this  
4 trial, we just went through some of those e-mails. What are  
5 they not discussing in those e-mails? Investing. This is all  
6 really about investing? And all these e-mails, what are they  
7 not discussing? Investing. A single idea from Mark Scott  
8 about how to make Ruja money. That's what they're not  
9 discussing.

10           Of course that's not what they're discussing, because  
11 that's not Mark Scott's job. He is not getting paid to do real  
12 investing. He's getting paid to launder Ruja's money.

13           Just ask yourself this question: What did Scott get  
14 all that money for? If this was about real investing, what did  
15 Scott get all that money for? Where are his brilliant  
16 investment returns, returns on investment, where are they?  
17 That's not what this is about. It's about money laundering.

18           So instead of real investments, what did Scott do? He  
19 did things like fake loans. You see that right here in this  
20 e-mail. And how do you know that this was a fake loan? Scott  
21 says it. Look at his words in this e-mail. There was a 5  
22 million euro distribution made as per the boss a few weeks ago.  
23 We need to paper this deal for the administrator. Those are  
24 Scott's words. The boss, as you know, is Ruja. That's the  
25 boss. Scott had wired 5 million euros where Ruja wanted it,

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Summation - Mr. Folly

1 and now, after the fact, Scott had to come up with fake  
2 paperwork to justify that wire. So what does he do? He comes  
3 up with a fake loan agreement. This is money laundering 101.  
4 Transfer money, paper it with an agreement that justifies that  
5 transfer.

6 These were not investments, ladies and gentlemen.  
7 These were transfers of Ruja's dirty money wherever she wanted  
8 it. And Mark Scott, he knew that those loans were all fake.  
9 Look at what he says in this next e-mail. "All loans should be  
10 considered available cash for obvious reasons." Ladies and  
11 gentlemen, when you make a real loan, when you loan money to  
12 someone, and it's real, that money is not available to you  
13 until they pay it back. That's obvious. That's common sense.  
14 But when it's a fake loan, and there is a fake loan agreement,  
15 and you're just sending the money where Ruja tells you to, the  
16 money is available. It's available cash. Scott knew that.  
17 You see it right here in this e-mail.

18 And also, ladies and gentlemen, look where the money  
19 goes from the Fenero Funds. 185 million euros goes straight to  
20 another one of Ruja's money launderers, Amer Abdulaziz. You  
21 heard about him from Konstantin. He is the Dubai money  
22 launderer who stole \$100 million of that money, that fraud  
23 money, and used tens of millions of dollars to buy racehorses.  
24 That's Amer Abdulaziz. That's who Scott is sending massive,  
25 hundreds of millions of dollars to.

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Summation - Mr. Folly

1                   And also look at this map, ladies and gentlemen. See  
2 there is a red arrow straight back to Bulgaria. 55 million  
3 euros straight back to Bulgaria.

4                   So this is the first reason, ladies and gentlemen, you  
5 know that this money was dirty. You know that Scott knew, at  
6 the time, that this money came from criminal activity. He  
7 created a massive hundred, multi-hundred million dollar fake  
8 investment fund for that very purpose.

9                   Ladies and gentlemen, reason number two. Scott was  
10 told, ladies and gentlemen, he was told that OneCoin was a  
11 fraud scheme. He was told that it was under criminal  
12 investigation. Look at this first e-mail. April 2016, that's  
13 when Scott got this e-mail, before a single penny had come into  
14 the fake investment funds. Scott was told OneCoin was a  
15 massive fraud scheme. And ladies and gentlemen, this was not  
16 some random hater on the Internet. This was a CPA. This  
17 article, we went through it. It was well reasoned. It was  
18 detailed. And it explained why OneCoin was a fraud scheme.  
19 That's what Scott was told before he took in one dime of that  
20 fraud money. He knew, because he was told.

21                   And it wasn't just that e-mail. Here's another one,  
22 it's from Gary Gilford, the guy who is running RavenR. And  
23 what did Gary tell him? He told him about a criminal  
24 investigation by the City of London police. He told him about  
25 OneCoin's history of having its bank accounts blocked globally.

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Summation - Mr. Folly

1 You see that right here in this e-mail that went straight to  
2 Mark Scott.

3 And ladies and gentlemen, let's not forget, Mark  
4 Scott, he is a lawyer. He knew exactly what these e-mails  
5 meant. He knew what it meant that OneCoin was under criminal  
6 investigation. He understood that article that explained why  
7 OneCoin was a fraud scheme.

8 Ladies and gentlemen, reason number three. The  
9 actions and words of Scott's co-conspirators. The people who  
10 he committed these very crimes with.

11 Now, let's look at this text message here. You'll  
12 remember these text messages from Irina Dilkinska to Konstantin  
13 Ignatov. And they included this e-mail attachment from Frank  
14 Schneider. The e-mail attachment where Schneider warns Ignatov  
15 that Mark Scott might be a highly placed U.S. law enforcement  
16 source.

17 Ladies and gentlemen, there is no need for Frank  
18 Schneider to be warning Ignatov about Mark Scott if Mark Scott  
19 is on the outside of this conspiracy. The only reason Frank  
20 Schneider needed to warn Ignatov and Irina Dilkinska is because  
21 Scott was on the inside. And they were very worried that if  
22 they told him the wrong thing, it could get them all in  
23 trouble. That's common sense. You don't worry about someone  
24 who knows nothing about the unlawful activities that you are  
25 involved with. You worry about someone who is on the inside.

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Summation - Mr. Folly

1 And that's where Scott was.

2 And look at Irina's response to this. It's also very  
3 telling. She says, whoa, wait, look, if Mark Scott was really  
4 an -- if he was really an informant, I'd already be screwed.  
5 That's Irina Dilkinska's response. And you know why that is,  
6 ladies and gentlemen. You saw all those e-mails throughout  
7 this trial. Irina Dilkinska was hand in hand with Mark Scott  
8 in all of this money laundering. So her response makes a lot  
9 of sense. She says that can't be it. Mark Scott is not an  
10 informant. Because if he was, in her words, she'd already be  
11 in much deeper shit.

12 Let's go to reason number four. Ladies and gentlemen,  
13 crypto phones straight from Dubai. Scott's refusal to speak on  
14 Skype because it was very unsafe. Scott's concerns about using  
15 certain e-mail addresses. Scott had something to hide, ladies  
16 and gentlemen. That is so obvious. He knew what he was doing  
17 was wrong, and he was trying to hide it.

18 And just take a step back for a moment. This is not  
19 the behavior of a real investment manager. It is the behavior  
20 of a criminal. Ladies and gentlemen, before this trial, had  
21 you ever heard of crypto phones from Dubai? Of course not.  
22 These are phones that criminals use to discuss their criminal  
23 activity. That's obvious. And look who had these phones.  
24 Look who in this operation had the crypto phones. Mark Scott,  
25 for starters, Ruja Ignatova, Gilbert Armenta, Sebastian

JBK3SCO2

Summation - Mr. Folly

1 Greenwood, the key people in this operation are the ones that  
2 had the crypto phones.

3 Ladies and gentlemen, it was not just crypto phones,  
4 as you can see here. Look, Scott refused to Skype. He was  
5 nervous about using particular e-mail addresses. He didn't  
6 want to discuss certain things in e-mail at all. You see  
7 example after example of that right here.

8 Ladies and gentlemen, look at Scott's actions. They  
9 are a window right into his mind. They are a window into  
10 exactly what he was thinking at the time he was involved with  
11 Ruja and Irina Dilkinska and all of the other members of this  
12 conspiracy. They show you Scott knew at the time that he was  
13 doing something wrong. That he was involved in criminal  
14 conduct.

15 Let's turn to the next reason, ladies and gentlemen,  
16 Scott knew. Just look at the money. That's how you know Scott  
17 knew. Look at how much he was paid, and look what he did once  
18 he got that money.

19 Scott received more than \$50 million for cleaning  
20 Ruja's money. \$50 million. Money that came straight from the  
21 OneCoin victims.

22 It's staggering. 50 million in less than two years.  
23 Ladies and gentlemen, Scott was not paid all that money because  
24 he was some superstar investor like Warren Buffet. That is not  
25 why Scott got that money. Remember, Scott earned Ruja Ignatova

JBK3SCO2

Summation - Mr. Folly

1 next to nothing, but he still got \$50 million. Why? Does Ruja  
2 Ignatova strike you as a person who is into charity?

3 Seriously. When she brought her brother into this, she barely  
4 gave him a raise from his salary driving a forklift. That is  
5 not a woman who is going to hand over \$50 million to Mark Scott  
6 for doing nothing.

7 Ladies and gentlemen, Ruja paid Mark Scott \$50 million  
8 because he was taking an enormous risk. He was laundering \$400  
9 million of Ruja's dirty OneCoin money. That is why Ruja paid  
10 him \$50 million.

11 And ladies and gentlemen, Mark Scott desperately  
12 wanted every single cent of that money. He was obsessed and he  
13 was willing to break the law to get his hands on that money.  
14 You saw his own words right here in this text message. He says  
15 "but I'm going for 50 by 50." \$50 million by age 50. That was  
16 Scott's goal. And he got it. He got it straight from the  
17 massive fraud scheme. 50 million.

18 And ladies and gentlemen, you also know why he wanted  
19 all that money. You saw at this trial what motivated him to  
20 commit these crimes. Was he doing well before? Sure. He was  
21 a partner at a law firm. But laundering money for Ruja, that  
22 was Scott's ticket to a whole different level. You saw that  
23 throughout the trial, waterfront Cape Cod houses, Porsches, a  
24 Ferrari, hundreds of thousands of dollars on watches. A yacht.  
25 This is what Scott desperately wanted, and this is what

JBK3SCO2

Summation - Mr. Folly

1 motivated him to commit these crimes.

2 Let's go to the next reason. Reason six. Scott's  
3 forgeries, his fake documents, his backdated agreements. This  
4 is the sixth reason you know that Scott knew that all this  
5 money came from criminal activity. He was so desperate to make  
6 this big lie believable to fund administrators, to banks, that  
7 he was willing to forge documents, fake letters. He was  
8 willing to do all of that. And it's damning evidence, because  
9 you don't falsify records, you don't create fake agreements if  
10 you're running real investments. That's what you do when  
11 you're trying to cover up and hide what you are really doing in  
12 secret. Laundering money. That's what you do when you're  
13 trying to cover it all up.

14 Now, ladies and gentlemen, I'm sure you remember Paul  
15 Spendiff, the well-spoken witness who you heard from the first  
16 week of this trial with the British accent. He worked for one  
17 of the fund administrators named Apex, and Mark Scott was his  
18 client. And at first, things went relatively smoothly. But  
19 within a few months, Apex began growing suspicious and  
20 concerned. They started raising some questions. Things did  
21 not quite smell right. So they asked Mark Scott to provide  
22 more information. And that, ladies and gentlemen, is where  
23 things got really bad for Mark Scott. First thing that went  
24 wrong is Scott forwarded by accident an e-mail. What's the big  
25 deal there? It has Irina@OneCoin. Scott had desperately tried

JBK3SCO2

Summation - Mr. Folly

1 to hide any connection between the investors and OneCoin. But  
2 he slipped up, he sent this e-mail, and Paul Spendiff noticed  
3 right away. He got on Google, and within minutes he had  
4 connected Irina Dilkinska to OneCoin. And he had also  
5 connected OneCoin to being a Ponzi scheme.

6 So Apex, they called emergency meetings, they made  
7 disclosures to government agencies, and they started to ask  
8 Scott hard questions. And meanwhile, behind the scenes, on  
9 Scott's side, he's totally panicking. He's worried because  
10 Apex is catching on, but ladies and gentlemen, he's also  
11 arrogant. He thinks that he's smarter than them, and he thinks  
12 he can trick them. So he starts to fake records.

13 Let's look at one example. The backdated wire  
14 instructions. Why does Scott do this? He needs some  
15 justification, ladies and gentlemen, for the massive amount of  
16 money that was transferred from IMS. So Scott, he just makes  
17 it up. Backdated agreements, that's what Scott does. And he  
18 really wants this to work. He really wants to pull one over on  
19 Apex. So he says how about use different pens so they don't  
20 look so mechanically produced. And then for the final touch,  
21 with his buddy Pike, he says, okay, I want you to send them to  
22 me and make them look scanned. So that this doesn't all look  
23 like what it really is, backdated agreements created after the  
24 fact to justify the transfer of so much money from IMS. And  
25 that's not all Scott does, ladies and gentlemen.

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Summation - Mr. Folly

1                   MR. FOLLY: (Continuing) The next thing he does is he  
2 forges IMS agreements, contracts. He just goes ahead and he  
3 forges them.

4                   Again, the reason is the same. He needs some  
5 justification for all this money that otherwise doesn't make  
6 any sense. So what does he do? He changes one percent to  
7 20 percent and 22 percent.

8                   You can see it right here in this metadata. It says  
9 last modified by Mark Scott. And then the next thing that  
10 happens is Mark Scott sends the forged contracts straight to  
11 Apex.

12                  It did not end there, ladies and gentlemen, because  
13 Apex saw straight through all of this. You heard that from  
14 Paul Spendiff.

15                  So Apex was not going to move that money. So Scott  
16 demanded a call. He demanded a call with Apex. And on that  
17 call Scott did exactly what he always did when it came to  
18 OneCoin. He lied and he lied again.

19                  First, he said he didn't have OneCoin's money. We've  
20 talked about all the ways you know that Scott knew that was a  
21 total lie.

22                  Next, you can see it right here. He pretends that  
23 Irina Dilkinska was the real investor into his funds. Another  
24 one of Scott's favorite lies. He pretends that Irina Dilkinska  
25 is a superstar entrepreneur who had suddenly earned hundreds of

JBK9SCO3

Summation - Mr. Folly

1 millions of dollars overnight; that Irina was inventing ways to  
2 access to potential buyers for direct sales companies and that  
3 that is where all this money came from.

4           Totally ridiculous. Not even a very good lie, ladies  
5 and gentlemen. And Scott knew this was a lie. Look at this  
6 next e-mail. It tells you exactly what Scott knew. He was not  
7 confused about Irina Dilkinska's money. You see that. He  
8 says: How will you show that you, Irina Dilkinska, personally  
9 earned -- own tens of millions of dollars? And have the banks  
10 verify that?

11           No way. Scott gets it. There is no way Irina  
12 Dilkinska could possibly justify all that money because it's  
13 not hers. It's Ruja Ignatova's. And you see that right here  
14 in this e-mail.

15           So Scott lied to Apex. He tried to hide the  
16 connection to OneCoin before Apex would shut everything down.

17           Ladies and gentlemen, one final point I want to make  
18 about this chain of events in late July and early August 2016.  
19 At the start of this trial you may remember the defense counsel  
20 told you about a deal that the defendant supposedly liked  
21 because he heard that Neil Bush was involved. I expect he may  
22 raise that again when he gets up here later. But, ladies and  
23 gentlemen, just remember one thing about that deal: The  
24 backdated agreements, the forged contracts that we were just  
25 looking at. That is the Neil Bush deal. That's what Scott

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Summation - Mr. Folly

1 does when he's nearly caught by Apex. He forges documents. He  
2 backdates letters. That's Scott's response because he knows  
3 this is all just a cover for laundering Ruja's money.

4                 Ladies and gentlemen, there are so many ways that you  
5 know Scott knew that this money was criminal money that was  
6 coming into his funds. But the last one I want to focus on is  
7 what Scott did and said when he was arrested, when he was  
8 arrested by the FBI and the IRS and he was questioned about his  
9 fake investment funds. Scott lied through his teeth. You saw  
10 this yesterday. So I just want to focus on a couple of the  
11 many lies that he told during that postarrest interview.

12                 To start, he was starting once again pretending that  
13 Irina Dilkinska and Gilbert Armenta were the real investors in  
14 these funds; not Ruja, Irina. But he took it a step further.  
15 He pretended he had forgotten Irina Dilkinska's last name, the  
16 person who had literally wired him over a hundred million euros  
17 and he supposedly forgot all together who Irina Dilkinska was.

18                 But Scott doubled down on his biggest lie of all that  
19 he told every step of the way throughout this conspiracy. When  
20 he was asked directly: And OneCoin and Ruja had nothing to do  
21 with the Fenero Funds or any funds that you were involved with?  
22 Look what he says: No. No.

23                 Wow. Ladies and gentlemen, you've sat through this  
24 trial. The Fenero Funds literally were Ruja Ignatova and  
25 OneCoin. That's entirely what they were. All of the money was

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Summation - Mr. Folly

1 from OneCoin and it all belonged to Ruja. Scott knew that and  
2 these lies that he told when he was arrested tell you  
3 everything you need to know about Mark Scott. When Scott gets  
4 caught, when he's questioned about Ruja and OneCoin, he  
5 completely lies. He tries to hide any connection between Ruja  
6 and OneCoin and his fake investment funds. And he lies because  
7 he knows that telling the truth would reveal his involvement in  
8 the crimes that he's committed with Ruja. It would reveal that he  
9 was involved with money laundering. It would reveal that he  
10 was involved in lying to banks all over the world. It would be  
11 an admission of the crimes that he committed. So he lies and  
12 he tries to hide it and cover it up.

13           Ladies and gentlemen, I want to talk very briefly  
14 about the bank fraud charge in this case, the bank fraud  
15 conspiracy charge. And much of the same evidence showing you  
16 that Scott is guilty of the money laundering conspiracy also  
17 shows you that he is guilty of the bank fraud conspiracy. As I  
18 mentioned earlier, in essence bank fraud conspiracy means that  
19 the defendant entered an unlawful agreement to get money from a  
20 federally insured bank through lies.

21           You saw so much evidence at this trial so I'm going to  
22 highlight a few key pieces of that evidence. Ladies and  
23 gentlemen, in order for Scott and Ruja and all of their  
24 conspirators in this operation to successfully move hundreds of  
25 millions of dollars all around the world through bank accounts

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Summation - Mr. Folly

1 all across the globe they had to lie. That was at the heart of  
2 what made any of this possible.

3 And you see it here. Scott and his conspirators moved  
4 the OneCoin fraud money all around the world. Hong Kong,  
5 Singapore, Cayman Islands, Ireland, UK, Germany, Bulgaria,  
6 Dubai, and, of course, right here in the United States. For  
7 all of that to work everyone, including Mark Scott, had to lie.  
8 That was the only way that this would work.

9 And the lies started at the very beginning when those  
10 OneCoin fraudsters told the victims from the United States that  
11 they could not tell the banks that they were paying for  
12 OneCoins. That's where the lies started. Lies to banks to get  
13 the banks to wire the money.

14 And of course the lies did not end there. At every  
15 single step in this chain more lies were told, lies to get the  
16 banks to move the money.

17 And, of course, Scott's funds were one of the biggest  
18 lies that was used to get the banks to sign off on moving the  
19 money. He lied to banks about who his real investors were.  
20 We've talked about that at length. He claimed the real  
21 investors were Irina Dilkinska, Zhoulong Cai, people like that.  
22 And he lied about where that money actually came from. Each  
23 time an investor sent Scott money Scott lied and claimed it was  
24 another investment into the fake investment fund.

25 And some of those lies, ladies and gentlemen, were

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Summation - Mr. Folly

1 told to federally insured banks in order to get them to  
2 transfer the money.

3 So let's focus on just one example. The money that  
4 came from Gilbert Armenta. The money from Gilbert Armenta that  
5 was sent to Scott on behalf of Ruja.

6 Now, as I mentioned earlier, Gilbert Armenta was  
7 already laundering a massive amount of money for Ruja. And you  
8 can see that here right on this chart. You can see the money  
9 from RavenR accounts, the OneCoin money that pours in to Zala  
10 Group. Tens of millions of dollars.

11 So Gilbert had a lot of Ruja's money. And Scott knew  
12 that. You can see that on this next e-mail.

13 Ruja told Scott: Gilbert has a lot of my money and  
14 I'm planning on getting it home. That's what Ruja told Scott.  
15 And one of the ways that they planned to do that was by sending  
16 it to Scott's fake investment fund disguised as a real  
17 investment from Gilbert Armenta.

18 This was a total lie. You can see that here on the  
19 next slide. Armenta sent millions of dollars to Scott's funds  
20 disguised as those very fake investments. And you can look at  
21 the wire instructions. You can look at the purpose that was  
22 given for these wires. They said things like asset management.  
23 They said things like investment into ZIIIXI. Random letters.  
24 Random letters. Who knows what those meant? But what we know  
25 is that they were a lie. This was not a real investment. They

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Summation - Mr. Folly

1 were transferring money for Ruja. They were laundering OneCoin  
2 money through these accounts.

3 And you can see in this next slide, ladies and  
4 gentlemen, it's absolutely clear. All this money was Ruja's.  
5 After Armenta sends it he's communicating with Maya Antonova at  
6 OneCoin about the status of the money. There is no question  
7 that money was OneCoin money and it was being moved for Ruja.

8 And, ladies and gentlemen, you know exactly why they  
9 had to lie to the banks. You heard about that in detail just  
10 how seriously banks take these anti-money laundering matters.  
11 You heard from an employee about the anti-money laundering  
12 program at BNY Mellon. 115 to 120 people. And their only job  
13 is to detect transactions just like these involving money from  
14 fraud schemes because banks obviously do not want to have any  
15 involvement in transferring money that's fraudulent.

16 And you also saw what happened, ladies and gentlemen,  
17 when the banks discovered that that money that was going to  
18 Scott's funds was actually involved in OneCoin. You saw  
19 emergency meetings at Apex. Anti-money laundering committee  
20 meetings at BNY Mellon. And there were consequences, ladies  
21 and gentlemen, when the banks figured it out. They would shut  
22 it down. They shut down the transactions and you can see that  
23 right here in this e-mail.

24 Scott understood these risks. He wasn't in the dark  
25 about it. He understood what they were facing. And you see it

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Summation - Mr. Folly

1       in this e-mail. Here he says they know OC OneCoin OL OneLife  
2       behind it. May raise serious anti-money laundering issues.

3           Scott knew the issue. He knew that they could not be  
4       honest with the banks. He knew that it was critical to lie in  
5       order to move the money through the banks.

6           Ladies and gentlemen, I'm going to sit down in just a  
7       minute but before I do I want to leave you with this. When you  
8       look at all the documents and all of those bank records that  
9       you saw at this trial and all of that other evidence it might  
10      seem like this case is complicated. But it's really, really  
11      not, ladies and gentlemen. It's very simple.

12           Mark Scott was paid \$50 million to launder Ruja's  
13      dirty money. He knew the money came from a fraud scheme and he  
14      knew that in order for this to work they had to lie to everyone  
15      in order to get the banks to transfer this money. And some of  
16      those banks were right here in the United States.

17           Mark Scott, ladies and gentlemen, he thought he was  
18      smarter than everyone. He thought that he could get away with  
19      this. He thought that through lies and deceit he could trick  
20      everyone. Banks, fund administrators, FBI agents. Mark Scott  
21      tried to trick them all. But now, here in federal court, it's  
22      time for Mark Scott to be held accountable for his actions.  
23      Don't let him trick you, ladies and gentlemen. There is only  
24      one verdict consistent with all of the evidence in this case.  
25      Mark Scott is guilty.

JBK9SCO3

1                   THE COURT: Thank you, Mr. Folly.

2                   Ladies and gentlemen, we'll take our break now. We'll  
3 take ten minutes then we'll bring you out for the defense  
4 summation.

5                   (Jury not present)

6                   THE COURT: Everyone can be seated. Ten minutes.

7                   MR. DiMASE: Judge, before we break. Two quick  
8 things. I sent an e-mail this morning regarding the jury  
9 instructions I don't know if the Court received that.

10                  THE COURT: That's been incorporated.

11                  MR. DiMASE: Thank you.

12                  I just wanted to very briefly address something that  
13 Mr. Devlin-Brown said before we started this morning.

14                  THE COURT: OK.

15                  MR. DiMASE: He had mentioned something about Gilbert  
16 Armenta and something that Mr. Armenta said in proffer notes  
17 that the defense received. I just want to make it clear the  
18 defense is able to or was able, I should say, to call  
19 Mr. Armenta if they saw fit to do so if they wanted to put that  
20 evidence before the jury. Obviously something in proffer notes  
21 in and of itself is inadmissible hearsay in court. So I  
22 just -- there was some discussion of that and I wanted to make  
23 a clear record on that.

24                  MR. DEVLIN-BROWN: Well I don't think there's anything  
25 more we can discuss about that.

JBK9SCO3

Summation - Mr. Devlin-Brown

1           THE COURT: No. Not at all. OK.

2           (Recess)

3           (Jury present)

4           THE COURT: Now we will proceed with the defense  
5 summation.

6           Mr. Devlin-Brown.

7           MR. DEVLIN-BROWN: Thank you.

8           Good morning everybody. So the prosecutors spent a  
9 good amount of time this morning talking about lots of things  
10 that are bad and terrible, starting with Ruja Ignatova, the  
11 scam she pulled off, all her houses and boats, her total  
12 disregard for victims. They talked about shell companies and  
13 nominee directors. Things that sound, you know, to use the  
14 technical term, sketchy. But none of it matters unless -- none  
15 of it matters at all unless the government can prove beyond a  
16 reasonable doubt that Mr. Scott knew that the money coming in  
17 to him from OneCoin was from a scam.

18           A lot of the other stuff, it's bad if he knew the  
19 money coming in from OneCoin was a scam. But if he didn't,  
20 it's not a crime. And the government has not proven that  
21 Mr. Scott knew the money coming in to OneCoin was a crime. And  
22 the evidence doesn't show that.

23           Now, where is the evidence that Mr. Scott knew that  
24 OneCoin was a fraud? And you know it's hard in these trials,  
25 right, it's been two weeks and a couple days. We've all been

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Summation - Mr. Devlin-Brown

1 here. I counted, hopefully I didn't get it off, but fifteen  
2 witnesses from the government. And then I went back and said  
3 well how many of them actually knew Mr. Scott? How many had  
4 met Mr. Scott? And it's two. Mr. Spendiff and Mr. Konstantin  
5 Ignatov. Two witnesses. They each met him once. Mr. Ignatov  
6 met him once and his memory was that he was a hundred percent  
7 certain of was that Mr. Scott had spoken to him about what kind  
8 of beverage he wanted. Mr. Spendiff he testified he met him in  
9 a hotel lobby to get some documents.

10 That's two witnesses each of who met him once. Those  
11 are the only people who came before you who had ever met  
12 Mr. Scott.

13 And you know there is no magic number of witnesses.  
14 That's I suspect in one of the Court's instructions. And two  
15 witnesses can be enough who saw someone once in an assault case  
16 or something, right. Two witnesses. They both saw someone get  
17 stabbed. That's enough. Two witnesses meeting a defendant  
18 once.

19 But this isn't an assault case. This case isn't  
20 really even about what Mr. Scott did. There is no question  
21 what he did. He set up these funds. He took in money that he  
22 knew -- I mean let's not make any dispute with that -- he knew  
23 was linked to Ruja Ignatova through various companies and  
24 people that he knew have links to Ruja Ignatova and he made  
25 investments on their behalf and he told the banks what he told

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Summation - Mr. Devlin-Brown

1 the banks. He had a code for what he told the banks, sort of  
2 an inner ethic and rationale as to what he should and shouldn't  
3 say, we'll get to that.

4 But the point here is this case isn't about what  
5 Mr. Scott did. It's about what was going on in his mind. And  
6 two witnesses who met him once in a case -- it's not a civil  
7 case. It's not about whether he keeps a boat. It's about his  
8 liberty. And two witnesses who met the guy once, for you, the  
9 jury, to conclude beyond a reasonable doubt that he knew this  
10 OneCoin money was a scam, it's not enough.

11 You know, the other thing that occurred to me, you  
12 know, why does it seem like there's been more, right? It's two  
13 witnesses who met him once. But it hasn't always appeared that  
14 way in the testimony. I mean one thing that the government did  
15 through a number of witnesses was asked them about documents  
16 they were not on, knew nothing about; you know, put up a  
17 timeline of travel next to an e-mail that someone had never  
18 seen and just have the witness kind of read it. And we  
19 probably got a little into that ourselves, just to respond.  
20 But it kind of creates an impression sometimes that there's  
21 more to it than there is. And you know a lot of these e-mails,  
22 a lot of these e-mails were from people like Irina Dilkinska,  
23 people like Frank Schneider, people like even Ruja Ignatova.  
24 And so their witnesses -- Gilbert Armenta, witnesses reading  
25 e-mails from these people who are not those people.

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Summation - Mr. Devlin-Brown

I can't cross-examine an e-mail. The defense can call witnesses. Both sides can call witnesses. But only the government has the burden of proof beyond a reasonable doubt. And they haven't met their burden because instead of presenting you with witnesses and evidence that actually proves what was going on in Mr. Scott's head it's been a lot of e-mails from people who aren't here to ask questions about.

I mean Irina Dilkinska, I'd love to ask her some questions. I don't know where to find her.

So what is the government left with? Have they proven anything at all? They have lots of e-mails. Some of them sound bad. I'll get to that. They have lots of e-mails. But they don't have any context.

What have they proven and what haven't they? Because Mr. Folly stood up and said we've proven lots of things. Some of the things they have.

OneCoin is a scam. We're not going to fight that battle. We said that in the opening statement. Sounds like it's a scam. I mean Konstantin Ignatov talked about what it was. Victims bought it. It seems like they don't really get anything for their money. So it sounds like it's a scam.

Have they proven some of the other things they've said sort of casually. You know, the Fenero Funds are fake, they're fake funds. Their evidence of that in part was that Mr. Scott cut and pasted some of the corporate gobbledegook that went in

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Summation - Mr. Devlin-Brown

1 the mission statement from various websites.

2 He's been a private equity lawyer, a corporate lawyer  
3 for 20 years. And their evidence that its fake, these funds  
4 that are registered and approved by various government bodies  
5 that they're fake, is that -- so I don't know about that one.

6 Concealment. That's a key issue in money laundering.  
7 You have to prove, as Mr. Folly said and the Court will  
8 instruct, that the purpose of the transfers was to conceal  
9 money.

10 And something about this case has never really made a  
11 lot of sense to me. And that's that money coming in to  
12 Mr. Scott was coming in from banks around the world, reputable  
13 banks. I mean money from one of the businesses was coming from  
14 Deutsche Bank in Germany. And so this theory that she had  
15 dirty money and she had to send it to Mr. Scott to his banks in  
16 the Caribbean, I don't quite get how that conceals it.

17 So they've proven some things. Some things are  
18 questionable. But the point is none of it really matters.  
19 None of it really matters unless they've proven what they  
20 really have to prove and that is what is in Mr. Scott's head.  
21 And that is that he knew OneCoin was criminal money. And they  
22 haven't done that.

23 So let me stop for a moment and remind us all sort of  
24 why we're here. You're the most important people here. I mean  
25 we're all sort of repeat players. We bring our own

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Summation - Mr. Devlin-Brown

1 negotiations into this, our own biases, except for Judge Ramos  
2 doesn't bring a bias. But everyone else here is a repeat  
3 player and you're not. And there's a reason for that. Because  
4 you're going to go home later. You don't have to think about  
5 what the next case is. You just have to think about the case  
6 before you and whether the government has met its burden of  
7 proving beyond a reasonable doubt.

8                 And the judge will instruct you on what that means.  
9 It's the highest standard there is in the law. Proof beyond a  
10 reasonable doubt must be so convincing that a reasonable person  
11 would not hesitate to rely on it in making an important  
12 decision, would not hesitate to rely on it.

13                 This case is full of reasonable doubts, ladies and  
14 gentlemen. And we're going to go through them.

15                 So I'd actually like to start with one of the last  
16 things the government talked about which is the bank fraud  
17 charge. And I'm not starting with it because I think it's the  
18 most important thing in the case. You know they had it at the  
19 end probably for their own reasons. I think it's the least  
20 important thing in the case. But I think it has a lot of  
21 potential to be confusing and distracting. And let me explain  
22 why.

23                 I'm sure you're all going to listen to the Court's  
24 instructions and follow them, but probably just sort of walking  
25 into the jury thinking: Oh, bank fraud, that's lying to banks,

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Summation - Mr. Devlin-Brown

right, like any time you're not truthful with the bank maybe that's bank fraud. That's not bank fraud. That's not at all bank fraud under the law. Bank fraud is very different. It requires a couple things that are quite relevant here.

One, it requires that the object of the fraud, the thing you're trying to defraud is either an FDIC insured bank or a customer at a bank whose money and property you're trying to get through deceit and lies.

So it's not what Mr. Scott may or may not have said to Apex, which isn't a bank at all. It's not what he said to Bank of Ireland, which is not insured by the FDIC. The bank fraud case is about what was said to U.S. FDIC insured banks.

And I'd like to go through that. The government talked about sort of some theories as to what may have been said to FDIC insured banks. And the evidence on this one, ladies and gentlemen, is clear. They have not met their burden beyond a reasonable doubt on bank fraud. It's not even close. And the sooner we can get this out of the case -- and you'll deliberate as you want to deliberate, of course, but I think it's a useful exercise to get it out because the money laundering case is much more substantive. So get rid of bank fraud and then debate the case that really matters.

So bank fraud. So the government's main theory of bank fraud was that Gilbert Armenta transferred money into the Fenero Funds. He transferred I think ten million the evidence

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Summation - Mr. Devlin-Brown

1 was and then it came back to him. He didn't complete the  
2 investment. And he transferred it from some of his bank  
3 accounts in the United States. There was Morgan Stanley. You  
4 heard the witness from Morgan Stanley. Sabadell Bank as well.  
5 And the bank fraud theory of the government there seems to be  
6 that Gilbert Armenta lied to those banks. And the judge will  
7 tell you. You'll listen to the instructions as to what sort of  
8 lie has to count for bank fraud. But their evidence is that  
9 Gilbert Armenta lied to the banks and that Mr. Scott was in on  
10 it; that Mr. Scott joined a conspiracy with Gilbert Armenta and  
11 others perhaps but the object of which was to lie to these  
12 banks, to trick them.

13           And there is no evidence that Mr. Scott and  
14 Mr. Armenta had such a conversation or relationship or anything  
15 in which Mr. Scott knew where Mr. Gilbert Armenta banked much  
16 less what are you going to tell your bank about sending your  
17 money to my fund.

18           I mean the government, they put up e-mails that are  
19 sort of cryptic sometimes. Probably not quoting them exactly  
20 accurately but you know there was the one with "please," with  
21 all the extra Es. You're asking about this. And sort of  
22 e-mails that sound, you know, like interesting, right.

23           But that's not evidence. The government wants you to  
24 assume that because there are these cryptic e-mails that  
25 there's not complete answers to, Gilbert Armenta is not here,

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Summation - Mr. Devlin-Brown

1 for one thing, that you should assume that the worst was said.  
2 And that is not proof beyond a reasonable doubt. That is not  
3 evidence to speculate without any basis as to whether  
4 Mr. Gilbert Armenta filled Mr. Scott in on what he was going to  
5 tell these banks.

6 But it's more than that, ladies and gentlemen. It's  
7 far better than that for the defense, because the evidence is  
8 actually affirmative that Gilbert Armenta lied to Mr. Scott,  
9 lied to Mr. Scott about what he was doing with those banks  
10 accounts. You saw a little bit of that we presented yesterday.  
11 And I want to, now that I'm here, be able to explain it a  
12 little bit more.

13 So this is Gilbert Armenta, Government Exhibit 407.  
14 September 12. He's e-mailing someone at his bank, Sabadell  
15 Bank, and he's -- this, I gather, is one of the government's  
16 theories of what the lie was when he told the bank it's for  
17 asset management. They're asking him about his wire transfer.

18 Now, look, I think that's pretty weak. Regardless of  
19 how Gilbert Armenta got his funds, you know, they're his monies  
20 in his accounts. It's asset management. He's sending it to an  
21 investment fund. Doesn't really sound like some great fraud.  
22 But more to the point, are you supposed to assume that  
23 Mr. Scott sort of coordinated with Gilbert Armenta on this  
24 e-mail? No.

25 So these are two Government Exhibits. The one on the

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Summation - Mr. Devlin-Brown

1 left, Government Exhibit 419, that's -- was in one of the  
2 stipulations I believe or maybe it came in through the  
3 Sabadell or now it's called Iberia bank employee. But this is  
4 a real bank document. This is a real letter that was sent on  
5 August 12, 2016 to Gilbert Armenta telling him that they were  
6 going to close his accounts for Zala Group and Fates Group  
7 after a month or so. Lists the account numbers. That was sent  
8 to Gilbert Armenta. It's on the stipulation.

9                 The next exhibit on the right is on another  
10 stipulation. It's a document that was recovered from one of  
11 the search warrants of e-mail accounts of Mark Scott. And the  
12 first page of it, which all of these exhibits will be  
13 accessible to you in the jury if you want to take a look, I  
14 don't have it on the screen now. But the first page you may  
15 remember was an employee of Gilbert Armenta forwarding the  
16 document to Mark Scott. And this letter is a bit different,  
17 right?

18                 It's got some extra accounts written down there.  
19 Shureden Services. Soleymew Management Services. Water-Tidal  
20 Services. It's got some different language in there too. It's  
21 in yellow. Any external transfers presently held pending or in  
22 transit shall be returned and credited to accounts in due  
23 course.

24                 And I showed you yesterday some other things that  
25 Gilbert Armenta sent, remember, with our paralegal who was

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Summation - Mr. Devlin-Brown

1 testifying both at the end of the day yesterday and today. And  
2 we saw forwarded from Gilbert Armenta to Mr. Scott supposed  
3 wire transfer records from Sabadell Bank for Water-Tidal  
4 Services and these other ones.

5 So, what kind of information was Gilbert Armenta  
6 sending to Mr. Scott? Well you remember Mr. Kishore on direct  
7 who testified from Sabadell Iberia and it was actually kind of  
8 an interesting moment in the testimony because he was shown  
9 this second letter, 4108. He was like no actually this doesn't  
10 look like a letter from the bank. I'm only aware of Zala and  
11 Fates Group. The other companies, he was not.

12 Then we have a defense stipulation marked as 1010,  
13 making clear that Iberia Bank, which is now the bank that owns  
14 Sabadell, couldn't find that copy -- a copy of that letter in  
15 4108. And then two is the real doozie. They didn't have bank  
16 accounts for those entities.

17 So that is a hundred percent clear, I submit, and we  
18 don't have a burden, but that is a hundred percent clear that  
19 Gilbert Armenta is actually affirmatively lying to Mr. Scott  
20 about what's going on with his bank account. And so the  
21 government wants you to infer that in the relationship probably  
22 in some other, you know, call that we don't have or something,  
23 probably that Gilbert Armenta and Mark Scott conferred about  
24 what Gilbert Armenta was going to say to Sabadell Bank. That  
25 makes no sense to speculate like that when you have evidence

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Summation - Mr. Devlin-Brown

1 like this. That's not even close to beyond a reasonable doubt.

2 And so there's another thing, right, Morgan Stanley.  
3 That was another bank account that Mr. Gilbert Armenta had. He  
4 sent some funds from there. There's a note on the account form  
5 that the witness explained. It had been confirmed by the bank  
6 employee that the wire transfer was authorized. They spoke to  
7 Gilbert Armenta.

8 There is a note in the report that says Confirm on LOA  
9 monies are capital investment by the account owner in a new  
10 company.

11 I believe no one had a specific recollection of that  
12 call but it would have come from the client. It would have  
13 come from Gilbert Armenta.

14 And there are no documents anywhere in evidence, the  
15 government hasn't shown them to you, they're not in evidence,  
16 where Mr. Scott is on any communications with Morgan Stanley  
17 bank.

18 And, look, if Gilbert Armenta is sending him fake  
19 documents from Sabadell Bank you don't assume that: Oh, with  
20 Morgan Stanley it was probably, you know, they were of the same  
21 mind and they probably got together about what Mr. Armenta was  
22 going to say to the bank.

23 This is another thing he apparently said to the bank,  
24 according to this exhibit, that he was investing in windmills.  
25 I mean the government is tilting at windmills with this theory.

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Summation - Mr. Devlin-Brown

1 There is no evidence at all that Mr. Scott was part of any  
2 representations that Mr. Armenta made to the bank.

3 This iCard transaction. I don't want to spend a lot  
4 of time on it because the government didn't either. This was  
5 one of those kind of confusing situations because the person  
6 who was testifying about it was the records custodian from  
7 Locke Lord, Mr. Reeder, who didn't really know much -- what, if  
8 anything, this transaction was about.

9 So we introduced as Defense Exhibit 499A a bill which  
10 shows that it's a real case, right. I mean there's \$69,000 --  
11 you can't see it that well, but it's at the bottom -- in fees.  
12 163 hours. There's people billing time. The description is  
13 redacted but they're billing time. It's actually not even in  
14 Mark Scott. So that's a real case.

15 And the government showed you some e-mails that  
16 Mr. Scott was on. This is one in which there's a conversation  
17 about Gilbert Armenta who had put some funds into Locke Lord  
18 for the iCard transaction that he was going to -- for whatever  
19 reason he wanted them back. So money was billed on the case  
20 but some of this stuff he put in he wanted back. And Mr. Scott  
21 is asked in I believe the e-mail below this. What's up? And  
22 he says he's not sure why the funds are being pulled back. He  
23 can forward it to the client.

24 And then you know there are e-mails. We've each  
25 showed you probably these a few times. There's e-mails with

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Summation - Mr. Devlin-Brown

1 Giselle who is one of Gilbert Armenta's employees. He's asking  
2 questions about it. Sometimes it's not clear what the answers  
3 are. But -- this is I think out of order in terms of how  
4 they're appearing. But there was one e-mail chain where she  
5 says: Don't respond to Mark. And the answer is: Understood.

6 Now, I don't know what's going on there. But we don't  
7 have the burden of proof. And for the government to suggest  
8 you should infer that there was some conversation about some  
9 lie that Gilbert Armenta may have told to a bank to send money  
10 here, there's just -- there's nothing there.

11 Then they talk about this other bank fraud theory  
12 which is Bank of New York Mellon and this one is kind of  
13 confusing.

14 So, just to be clear about this one. So Bank of New  
15 York Mellon we had a couple witnesses testify. They are based  
16 in New York. They mostly don't do accounts for people. They  
17 do accounts for institutions, for other banks. And so DMS,  
18 which is based in the Cayman Islands, had an account with Mark  
19 Scott and Apex actually was involved in sort of controlling  
20 money in and out of that account for a while.

21 So Mark Scott has an account with DMS. If DMS wants  
22 to send money in dollars, then DMS sends those dollars via Bank  
23 of New York Mellon in New York to some other bank. There were  
24 some charts. Right.

25 And so Mr. Scott didn't have an account at Bank of New

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Summation - Mr. Devlin-Brown

1 York Mellon. The idea that he defrauded Bank of New York  
2 Mellon, where is there anything for it? And this is what seems  
3 to be the government's theory on it.

4 So, they showed a spreadsheet. It had a number of  
5 tabs, 536A. Some of them were euro transactions, money like  
6 coming into the Fenero Funds. Those, I don't believe the  
7 evidence shows went through Bank of New York Mellon in  
8 New York. Because dollar transactions have to clear there. So  
9 these are the dollar transactions.

10 And you'll see right away they take place in 2016.  
11 And then what happens is -- we saw some of it actually just  
12 this morning, right. Bank of New York Mellon had some  
13 questions about the transactions in 2017. There is e-mail  
14 evidence that in responding to those questions David Pike, who  
15 I believe there's been testimony he was an assistant to  
16 Mr. Scott at times. He sent an e-mail to Colm O'Driscoll who  
17 is the bank at DMS and the chain below is asking some  
18 questions. And he's essentially: We told you this. What's  
19 the problem?

20 There is no evidence, ladies and gentlemen, no  
21 evidence that Mr. Scott or Mr. Pike ever said anything to their  
22 banker Colm O'Driscoll other than leave us alone. There is no  
23 evidence of that.

24 What there is evidence of is that another person at  
25 the bank, Nanalie Cover at DMS Bank sends an e-mail in March of

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Summation - Mr. Devlin-Brown

1       2017 with an explanation for the transaction. And it's not  
2 appearing at the part of the bottom right now. But in one  
3 version of this e-mail anyway, the judge showed it to you this  
4 morning or we showed it to you this morning, there was  
5 something where Nanalie Cover says that Colm O'Driscoll says  
6 that he got information from Mark Scott and it's, you know,  
7 it's all OK, it's a onetime thing.

8                  You were specifically instructed that you can't take  
9 that for the truth of what was said, for whether Mark Scott  
10 said anything to Colm O'Driscoll at all or who knows what Colm  
11 O'Driscoll said to Nanalie Cover. Why this was relevant and  
12 admitted in evidence is Bank of New York Mellon was doing an  
13 investigation. So stuff they were learning was relevant to  
14 their investigation. But there is no proof, no proof at all  
15 that Mr. Scott had anything to do with any representations made  
16 to FDIC insured Bank of New York Mellon about its customer DMS  
17 about transactions that had taken place already a long time  
18 ago.

19                  That's the bank fraud case. And it's not. It's just  
20 not there. And the sooner one can get that out of the case,  
21 the sooner one can focus on money laundering. Because I'm not  
22 going to pretend I can just wave money laundering away because  
23 that's a more serious allegation and I want to spend time on it  
now.

25                  I do want to say one more thing about Bank of New York

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Summation - Mr. Devlin-Brown

1 Mellon. It's a little out of sequence but something the  
2 government said made me think it was a good example to bring up  
3 right now. Remember how in the government's summation they  
4 talked about Mr. Scott was told, right, Mr. Scott was told that  
5 OneCoin was a fraud. And their evidence for that was -- I  
6 forget the exhibit number but it was a short e-mail from Irina  
7 Dilkinska. I believe the title was called false and misleading  
8 or something like that, that had a link to a blogger where the  
9 government read the article for ten or fifteen minutes. That  
10 was also by the way not offered for the truth of anything but  
11 for the fact that Mr. Scott got it.

12           OK. Yeah. He got it. There's evidence he got it.  
13 Was there evidence he clicked on it? No.

14           Was there evidence he ever followed up with it? No.  
15           So you can take that for what it's worth. I submit  
16 it's worth basically nothing. Because Mr. Scott was getting  
17 evidence from other sources. He was getting evidence from  
18 Deutsche Bank, which was sending payments into his fund from  
19 various Ruja Ignatova entities. HSBC was sending money.  
20 That's what goes to Mr. Scott's state of mind. That's what  
21 goes to him thinking this seems legitimate.

22           And Bank of New York Mellon, the dates on this are  
23 interesting as well. March 2017. Because you remember you  
24 heard testimony, you know there was this big investigation.  
25 They had a large anti-money laundering department. And after

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Summation - Mr. Devlin-Brown

1 this big investigation what did they do? Did they say OneCoin  
2 is a scam, we're putting this on our filter? No more money  
3 ever going through touching OneCoin or Ruja Ignatova. No. He  
4 testified no, they didn't do that. They put IMS.  
5 International Marketing Services in the filter. They gave some  
6 instruction to DMS that you ought to be careful essentially.  
7 No evidence they ever gave any instruction to Mark Scott.

8 This is Bank of New York Mellon 2017. They're not  
9 even fully walking away from Ruja Ignatova at that point.

10 Mr. Scott -- well get into the timeline in a minute --  
11 he has already decided he's returning his funds; that he  
12 doesn't want to have anything further to do with any sort of  
13 investments with Ruja Ignatova. And by July of that year he's  
14 out of it completely.

15 And so Bank of New York Mellon they hear some things.  
16 They're suspicious. They have an investigation. They don't  
17 even fully shutdown anything having to do with Ruja Ignatova  
18 and they come in and testify as a witness. Mr. Scott shuts  
19 things down and he's indicted.

20 I know the government had seven reasons and if I had  
21 known in advance I would have tried to do seven as well. But  
22 we have five reasons for reasonable doubt and although I kind  
23 of made a little joke there it's not about the number of  
24 reasons because, again, the defense doesn't have to prove  
25 anything. Like one reasonable doubt is enough. We don't have

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Summation - Mr. Devlin-Brown

1 to have five. And some of these have subparts also. But we  
2 don't have to have any specific number. Any reasonable doubt,  
3 anything that gives you pause before making a decision about  
4 this man's liberty is a reasonable doubt.

5 So, I'm going to go through all five. Some are pretty  
6 short. This one is very short. But it's important. I  
7 mentioned it in my opening.

8 Mark Scott was not part of the OneCoin scam.

9 Wire fraud. The OneCoin scam is wire fraud. You're  
10 going to hear the judge instruct about what that means. But  
11 it's lying to people to get their money or property. Lying in  
12 this case to people about what OneCoin was, whether it was  
13 valuable. Konstantin Ignatov pled guilty to that. You know  
14 basically selling people a bill of goods on OneCoin.

15 Mr. Scott wasn't even charged with that. And there's  
16 zero evidence that he had anything to do with that. I mean at  
17 one point in the government's summation they talked about what  
18 the OneCoin fraudsters were saying to investors in the U.S.  
19 They sort of have like a broad term. Whoever those people are,  
20 Mr. Scott isn't one of them. He had nothing to do with  
21 marketing OneCoin in the U.S. or in any other location. He had  
22 nothing to do, you saw I think on your screen, instructions to  
23 write, it's an educational program or something to your bank.

24 There's zero evidence connecting him to that. He was  
25 not involved in the OneCoin scam. So why is that a reasonable

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Summation - Mr. Devlin-Brown

1 doubt? Well, look, if you're doing the illegal business, if  
2 you're doing the wire fraud, if you're scamming the people,  
3 then obviously it's not a giant step to say, you know, the  
4 money that you're doing from the scam you're involved in, you  
5 know that's criminal money.

6 But Mr. Scott wasn't. He wasn't involved in that.  
7 And that means the government has to overcome something. They  
8 have to show that Mr. Scott, despite not being involved, not  
9 even accused of being part of the scam on OneCoin to the  
10 public, that he somehow knew that OneCoin money was criminal,  
11 the money coming from Ruja Ignatova.

12 (Continued on next page)

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JBK3SCO4

Summation - Mr. Devlin-Brown

1                   MR. DEVLIN-BROWN: (Continuing) And this is the second  
2 reasonable doubt. Ruja kept the OneCoin scam very, very  
3 secret. So you remember -- well, before you divert your  
4 attention to that.

5                   You remember there was testimony about the blockchain,  
6 right, that OneCoin had. And a cryptocurrency, basically, no  
7 blockchain, it's fake. If it doesn't have that code that lets  
8 people keep track of which coins are mined and where they're  
9 going, it's nothing. OneCoin's blockchain was fake. I mean,  
10 the government's right. We're not, we don't have independent  
11 knowledge of that, but it sure sounds fake. Konstantin Ignatov  
12 said it was fake.

13                  But the public didn't know that. They had auditors,  
14 there was testimony. They had auditors certify and put on the  
15 OneCoin website that it was real. And Ruja Ignatova kept that  
16 scam secret even from her own brother.

17                  So I thought this part of testimony was pretty  
18 interesting. Who, if anyone -- this is from the direct -- is  
19 able to see transactions in OneCoin's blockchain? Only Ruja  
20 and the IT department. And then I follow up on that on  
21 cross-examination. And he identified the people in the IT  
22 department. And they gave him like a computer demo of the  
23 blockchain, a dog-and-pony show making it seem like it was all  
24 real and it wasn't. But they actually went to the trouble for  
25 having a fake thing for people to look at.

JBK3SCO4

Summation - Mr. Devlin-Brown

1           And one of the things I thought was really interesting  
2 from the cross-examination of Mr. Ignatov was he believed in  
3 the blockchain until pretty, pretty late in the game. I  
4 understand initially he was essentially hired to be an  
5 assistant to Ruja Ignatova, but after she disappeared in  
6 October 2017, he became one of the leaders. That was the  
7 testimony. So this is March 2018. And I don't think I have it  
8 on the screen here, but some time before March 2018 there had  
9 been a raid by Bulgarian authorities and that caused  
10 Mr. Ignatov to have some doubts about whether the blockchain  
11 was real. But then there was a report by a German lawyer  
12 saying it was real and he thought, yeah, that convinced him or  
13 gave him some comfort. It wasn't until May of 2018 when he  
14 finally learned from Irina that they weren't really mining  
15 codes. This was a secret.

16           Now we get to a point of logic really. Right. Which  
17 is Mark Scott's not part of the OneCoin scam. It's clear they  
18 want to keep this thing secret, even within the company.  
19 Right. Ruja and the IT department have the access to it. So  
20 does it make sense that people doing that, when they're  
21 contacting lawyers, bankers, people they don't know, would come  
22 out and say, we're running a kind of a scam here, would you  
23 help us with our money. That's dumb. That doesn't make any  
24 sense. Why would a criminal do that? You want to make  
25 yourself appear legitimate if you want to convince people to

JBK3SCO4

Summation - Mr. Devlin-Brown

1 handle your investments.

2 She didn't go to the banks around the world and say  
3 this is a scam. She presented it normally and legitimately.  
4 You know that's what she did with Mark Scott as well.

5 I think the government showed you this one. This is  
6 pretty early on, the introduction from Gilbert Armenta, man of  
7 mystery. And then, we have setting up, is it convenient to  
8 talk. Then we have this thing. Right. I mean, you remember  
9 this calendar entry that the government put into evidence. TC  
10 to discuss money transfer/laundering issues. And it's like,  
11 you know, put in your calendar anti-money laundering or  
12 avoid -- have a little more descriptive entry.

13 There's no way, I submit, even if we had no other  
14 evidence in the record, there is no way Ruja Ignatova, who  
15 doesn't know Mark Scott and he puts in his calendar let's talk  
16 about money laundering, that that doesn't make any sense.

17 Then in the case towards the end there was another  
18 exhibit introduced, the government had it marked as an exhibit.  
19 We did too. This was one of the few times we said we want our  
20 mark on it as well. Because this is a very critical e-mail in  
21 understanding the early relationship between Ruja Ignatova and  
22 Gilbert Armenta. Let me zoom in on a couple of things.

23 So she's reaching out to Mark Scott, she says thank  
24 you for the good call. This is October 13. It was a pleasure  
25 to speak to you. They've already had that conversation in the

JBK3SCO4

Summation - Mr. Devlin-Brown

1 calendar as money laundering call or whatever. And I want to  
2 be clear. Ruja's not -- these things she is saying here are  
3 not true. She's lying. I mean, OneCoin is a scam. We are all  
4 in agreement on that. But that's not what she's telling Mark  
5 Scott. She's telling him she wants to hire him for asset  
6 protection. She has some personal assets she wants to protect  
7 from risks. She's tell him about OneCoin, it is a tricky  
8 field, you know. Sometimes people confuse it with Ponzi and  
9 other illegal ways doing business. I guess sometimes they're  
10 spot on. But, that's what she's telling Mr. Scott. People  
11 could confuse this. She need hands on advice. She's being I  
12 think the way you might be if you're speaking to some lawyer  
13 you're meeting for the first time to some degree, you know,  
14 being outside legality in China does not concern me. You know.  
15 But, risk not being not legal in U.S.A. I would take extremely  
16 serious.

17 That's what she's telling Mr. Scott. Not because it's  
18 true, but because that's what she wants Mr. Scott to think.  
19 She talks about business assets and personal assets. She talks  
20 about other wealth. She has shares in software ventures,  
21 agricultural products, so on. She talks about another lawyer  
22 who is supposed to help her, and we are going to talk more  
23 about that lawyer later. Robert Courtneidge. That name is I  
24 think misspelled there.

25 So, then you know what happens after that, right after

JBK3SCO4

Summation - Mr. Devlin-Brown

1 she's introduced. Mark Scott engages her services. There's a  
2 bill, again, the entries are redacted. He bills from Locke  
3 Lord. They kept the scam a secret, and they kept it secret  
4 from Mark Scott.

5 There is also no evidence, and now I am going to start  
6 spending a little more time on things we've seen, but there is  
7 no evidence that Mark Scott believed OneCoin was a scam. Look,  
8 there's -- there's evidence of e-mails where he's talking about  
9 his understanding of what sort of KYC needs to be done and  
10 things like that. I am going to get to that. But just focus  
11 with me right now on where is the evidence that he believed  
12 OneCoin was a scam. That money from OneCoin was criminal  
13 money. Well, it didn't come from any witnesses.

14 You remember two witnesses, right, each met him once.  
15 One of them, really the only one who could even theoretically  
16 have some visibility into what's going on in Mark Scott's mind,  
17 is Konstantin Ignatov. Konstantin Ignatov, he testified, he  
18 testified for one thing, they had many meetings with the  
19 government in advance. Both before and after he got his  
20 cooperation agreement. But he came in here and testified that  
21 Mr. Scott was one of the main money launders for OneCoin. Wow,  
22 that's bad. Right? That's devastating testimony.

23 He also testified he met him once. And maybe I spent  
24 too much time on that meeting with him. But, you know, that  
25 meeting must have been the most vivid meeting ever. He

JBK3SCO4

Summation - Mr. Devlin-Brown

1 purported to remember in detail, and some of the details were  
2 conveniently pretty suspicious sounding. He testified on  
3 direct about how the meeting was originally with Ruja and then  
4 Irina Dilkinska arrives and he brings her into the office, he  
5 mentioned the part earlier about what beverage Mr. Scott  
6 wanted. And then Ruja comes out and says everyone go home.  
7 That was the only time that happened ever.

8 Just didn't add up. Really? The one time, the one  
9 time you meet him happens to be the one time she ushers  
10 everyone out of the office? And you know, they have separate  
11 offices, as was the testimony. The mom, there's lots of  
12 offices. They probably could have met somewhere else as well.  
13 It just didn't make a lot of sense.

14 He sort of wavers on that on cross-examination. Are  
15 you 100 percent sure Ms. Dilkinska was at the meeting? I'm  
16 pretty sure seeing them. I'm pretty sure they met in Sofia  
17 because she told me the week afterwards that they spent a lot  
18 of time together. Then, elsewhere on cross I asked, So after  
19 the meeting that Mark Scott had with your sister Ruja on  
20 July 2016, did Irina tell you about what had occurred at the  
21 meeting? He said no. You know, this is the one meeting.

22 And I actually, I feel some sympathy sometimes for  
23 Konstantin Ignatov. You maybe expect, I am a defense lawyer,  
24 he lied, he was a horrible person. I think he lied about that.  
25 I think he exaggerated the meeting. But he was also clearly

JBK3SCO4

Summation - Mr. Devlin-Brown

1 manipulated by his own sister.

2 So, Konstantin Ignatov. He met once, and then I kind  
3 of drew it out. He didn't have phone calls, didn't have text,  
4 didn't have WhatsApps. He had e-mails, I think he had like 100  
5 e-mails. And it was clear that they were basically all about  
6 planning trips. Never anything about the Fenero Funds. Never  
7 anything about blockchain. Never anything about anything that  
8 could possibly shed light for you, the jury, into what  
9 Mr. Ignatov knew about what was in Mr. Scott's mind.

10 So, he said he heard that Mr. Scott was a money  
11 launderer. As we kind of drilled down into it there may have  
12 been office gossip kind of stuff, but really he heard it from  
13 Irina Dilkinska. And aside from his testimony that he heard it  
14 from Irina Dilkinska, the government offered these exhibits.  
15 And I think they're revealing for a couple of reasons.

16 So, one is the time. June 14, 2018. Mr. Ignatov  
17 testified that Mr. Scott was, after early 2017, he didn't see  
18 him around anymore. He had no dealings with him. And this is  
19 June 14, 2018. And Irina Dilkinska says about Mr. Scott, he  
20 wants to know what's up with Phoenix so to help. And then she  
21 quotes him, purports to quote him anyway. As to him wanting to  
22 help, it is better to let me know what is going on. We have  
23 our audits going on in BVI and will submit to the financial  
24 commission.

25 Well, we know what's going on from e-mails with

JBK3SCO4

Summation - Mr. Devlin-Brown

1 Mr. Scott and Irina Dilkinska at that time. The government  
2 showed you this e-mail. At first glance, oh, it looks like  
3 Mr. Scott's pretty much working with OneCoin in 2018. But it's  
4 actually forwarding a document for signatures from July 17 of  
5 2017. That's when Mr. Scott returned all the funds except for  
6 a litigation reserve that he was holding. And that's the only  
7 thing that Mr. Scott and Ms. Dilkinska are talking about.  
8 That's only thing that relates to these texts that  
9 Mr. Konstantin says, you know, support that Mr. Scott is a  
10 money launderer.

11 So I'll go through these quickly. I don't know we  
12 need to go line by line. After he sends the e-mail, Irina  
13 Dilkinska, apparently now going by Malena Fahient, says so you  
14 want to tell me the remaining 1 million plus 250K were already  
15 sent to Phoenix? Mr. Scott replies not what I'm saying. We  
16 are holding legal escrow until all investigations over. And  
17 the funds at Phoenix are held by Phoenix as custodian for  
18 investor, not by us. Irina need full information on  
19 investigation and status please. We have no investigation at  
20 this point. You do. And we are not sure if it will come our  
21 way. You do means who, company or me personally. Again, I  
22 don't know that we need to read about issues in Bulgaria.  
23 Company's fine in Bulgaria. This is what all that's going on  
24 with Mr. Scott and anyone from OneCoin in 2018. Which is they  
25 are saying hey how about the 1 million, and he's saying, you

JBK3SCO4

Summation - Mr. Devlin-Brown

1 know, there's investigations. There we go. Okay.

2 So, you don't have anything from Konstantin Ignatov  
3 that you could take at all to the bank that Mark Scott knew  
4 that OneCoin was a scam. But it's actually worse than that. I  
5 almost skipped over it, right, because it would be one thing,  
6 it would be one thing if Konstantin Ignatov had taken that  
7 witness stand and said, fair point, most of what I learned is  
8 from Irina, but she's a reliable person. And she's not here,  
9 know but she's a reliable person. I can vouch.

10 He said literally the opposite. Now Irina Dilkinska  
11 is not an honest person, is she? No, she is extremely  
12 dishonest. That's my question. She is extremely dishonest; is  
13 that fair to say? Yes.

14 Two pages later: So you couldn't really trust a word  
15 Ms. Dilkinska was telling you June 2018, right? I had serious  
16 doubts about it. You certainly couldn't trust her about  
17 anything important in your life? No.

18 She didn't testify before you. The person who  
19 testified barely knows Mr. Scott. What little he knows seems  
20 to be from Irina Dilkinska who he thinks is a big liar. That's  
21 not worth any weight, any weight in your consideration as to  
22 what was going on in Mark Scott's head.

23 So, also witnesses aren't the only evidence. You  
24 could have e-mails. I mean, this is an e-mail that says what's  
25 going on in someone's head. Sebastian Greenwood, one of the

JBK3SCO4

Summation - Mr. Devlin-Brown

1 founders of OneCoin to Ruja Ignatova. We are not mining  
2 actually but telling people shit.

3 Sorry. I got in trouble earlier this morning by not  
4 reading the phrase "ass" to you yesterday in an e-mail that was  
5 redirected on this morning. So I am reading it out loud this  
6 time.

7 This is another e-mail. This says what's going on in  
8 people's head. Right. You know, it's never good to have a  
9 chart that says fake coins. I mean that's pretty, pretty  
10 clear. There's nothing like that, there is nothing like that  
11 from Mr. Scott. There is just no evidence anything like that  
12 what was going on in his head from witnesses, from e-mails,  
13 from anywhere.

14 So, that's when the government starts pulling out  
15 stuff that I just don't think is fair. It's not fair for you  
16 to speculate that, oh, you know, we must be missing the  
17 evidence but it is there somewhere. There is all this  
18 testimony about the crypto phone. And I forget who it was but  
19 someone said, yeah, I heard that from The Good Wife. These, I  
20 find it sort of amusing. It is a serious and amusing kind of  
21 thing, like these high-tech products, they work better on TV  
22 sometimes than real life.

23 These are the instructions. Okay. I am not going to  
24 blow it up but pretty clear. I mean, no problem. And then you  
25 have this kind of comical stuff. Mark Scott, someone's entered

JBK3SCO4

Summation - Mr. Devlin-Brown

1 a password. Ruja can't even get it to work in February 2016.  
2 March now, he is asking her for the first time, do you have a  
3 crypto number. My PIN not working in January 2017.

4 This is what Mr. Ignatov said on direct. People  
5 around Ruja that were using crypto phones were always asking me  
6 how they can make the crypto phones work when somebody doesn't  
7 work the way they want to use it.

8 Who knows if they got this thing working. But let's  
9 say they got it working fine. Why, I mean this is pretty  
10 clear, lots of e-mails back and forth with Ruja, Mark Scott.  
11 Why should you jump to some conclusion that the real, you know,  
12 criminal conversations happened on these lines that we  
13 supposedly don't hear.

14 They played for, you remember in the government case,  
15 this panicky phone call between Gilbert Armenta and Ruja  
16 Ignatova when Gilbert was working with the feds, and she said  
17 something like, oh, you have to always talk on crypto phone or  
18 something to that effect. It's not safe. And I don't know if  
19 the point was, like, so you should assume Mr. Scott probably  
20 had the same understanding about how to talk there. I mean,  
21 this was a very special situation. Gilbert Armenta was in a  
22 romantic relationship with Ruja Ignatova. Ruja -- he is  
23 working with the FBI. Ruja Ignatova starts to suspect that  
24 there is an FBI investigation. There are bugs planted in his  
25 office. So yeah, that's a pretty panicky call, but it is a

JBK3SCO4

Summation - Mr. Devlin-Brown

1 special case. So they do that.

2 Then they have this sort of evidence, which is just  
3 not evidence. Look at this car. Right. I mean, look, they  
4 call it a yacht. I think Ruja's was more a yacht, but this is  
5 a big boat that he bought. This isn't a great picture of the  
6 house, but you remember there were some that were like up in  
7 the air.

8 What does that prove? What does that prove? People  
9 running investment funds get a lot of money. They get a lot of  
10 money, whether they are committing a fraud or whether they are  
11 just running it.

12 And I wasn't going to come back to this, but I saw it  
13 again in summation. I mean why. This is the picture of  
14 Mr. Scott, 101. Plenty of nice pictures on the Locke Lord  
15 website. This picture, I submit, this is a picture -- no  
16 offense -- but if this is on your local news, you lock your  
17 doors and you hide your kids. None of this is evidence.

18 And Mr. Spendiff made that clear as well. You looked  
19 at the mission statement. I know the funds varied and such  
20 over time, but you could get in the neighborhood of 10 percent  
21 when you put these things together, and a lot of fund managers  
22 make a lot money.

23 So the case here really isn't just that Mark had no  
24 reason to know, or rather, that there is no evidence that he  
25 thought in his own mind that OneCoin was a scam. There is lots

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Summation - Mr. Devlin-Brown

of evidence that he relied on things that would give someone comfort that it wasn't a scam. So remember, Deutsche Bank sends the money from IMS into the Fenero Funds. And Scott in his call that he doesn't know is being recorded with Paul Spendiff, that's one the things he points to is what's comforting him. Anyone can post any blog on the internet, but money's coming in from a major bank.

HSBC, this is Government's Exhibit 1256.

October 2016. Now, I think there are in the process of shutting down this account, if you look maybe at the full e-mail chains and they want Mr. Scott's help. But this is October 2016, back when he was doing things with Apex. HSBC seems to have accounts for a Ruja Ignatova linked company called Innoin Limited. That was actually one you may or may not remember. That was actually Innoin Limited, there were e-mails between Mr. Scott and others that has Ruja Ignatova's name on it. Not sure we can do that one.

So, there is also evidence that would have given him comfort and did give him comfort from Locke Lord. You remember Robert Courtneidge. This is what Mr. Scott writes in this e-mail with Michael Comiskey who was the like legal counsel within Locke Lord about the \$33 million potential transfer into the escrow. Robert Courtneidge has been advising her since outset on currency and card issues, Robert would know more about OneCoin, but I'm familiar.

JBK3SCO4

Summation - Mr. Devlin-Brown

1                 Here is an e-mail from Ruja Ignatova. Setting out,  
2 Mark, you are doing our corporate legal structure. And Robert  
3 and I work on OneCoin as a cryptocurrency. Not on corporate  
4 structure but on questions like blockchain. How to position  
5 OneCoin as a payment method.

6                 So, there is a division of roles at this law firm, and  
7 Robert Courtneidge is the guy who knows crypto. And that's  
8 comforting to Mr. Scott. There has been no evidence at all  
9 that Robert Courtneidge ever told Mr. Scott or e-mailed him or  
10 anything to say, you know, some red flags on this one. So why  
11 would Mr. Scott not have comfort that his law partner is doing  
12 this. He got a cryptocurrencies report, remember, from  
13 Mr. Courtneidge. I think we saw a version today. He sent that  
14 to some of the investment funds.

15                 Then I think something was kind of interesting with  
16 the \$33 million attempted wire transfer. Because the picture  
17 that I think that initially kind of came across in the  
18 government direct is, you know, they saw there was going to be  
19 some transfers so Ruja Ignatova, really bad. For one thing,  
20 this is Michael Comiskey. AML rules are stricter in the U.K.  
21 than the U.S. He is acknowledging that the rules around these  
22 rules are tougher.

23                 But then what I think really was interesting is the  
24 impression that Locke Lord, Locke Lord saw something, right.  
25 Just like the blogger and therefore Mark Scott should have been

JBK3SCO4

Summation - Mr. Devlin-Brown

on notice. There is nothing like that. Locke Lord keeps working with her. There is an engagement letter from October 2016 from James Channo, a partner. The scope and objectives review intragroup shareholders loan. And then, I mean, it went on into 2018. May 24, 2018, they run a conflict check on Ruja Ignatova, and they note in the bolded point, or underlined point that there was negative news and world check reports require PGL approval. But they opened a matter for her anyway. This is after she fled, right. July 2018.

The part at the bottom is interesting, right. We may need to consider transferring title of properties owned in the U.K. in the name of your brother Konstantin.

So the picture the government has presented by taking things sent to Mr. Scott that we don't know if he clicked on, it sort of gives the impression that everyone is running from OneCoin. Like it's -- and that's a danger, again, of hindsight. But not everyone was doing that. And Mr. Scott, from the things he saw from Robert Courtneidge, from major banks sending him money, he didn't think that way either.

So, I am going to get into what I think is frankly some of the toughest stuff for us to get into in this case, and that is what Mark Scott says in e-mails and other things, both with the people he's working with linked to Ruja Ignatov and to banks. And the government's done a greatest hits of e-mail a few times. Summation we got some, we had a day of testimony by

JBK3SCO4

Summation - Mr. Devlin-Brown

1 an FBI agent who read them out.

2 And I have a couple reactions to it. Three, really.  
3 First, you know, I cringe. Right. Like, you had to write  
4 paper the deal for the banks? If you just written put all the  
5 documentation together so the banks will approve the deal, that  
6 sounds a lot better. Paper the deal. You happen to choose  
7 words that the money launderer guy say were bad. I cringed.

8 Then I have a bit of a there but for the grace of God  
9 go I. I don't know if someone took isolated things from --  
10 this is not an invitation -- but took isolated things from my  
11 e-mails and put them together, there would probably be stuff  
12 that could make me really bad too, and I'm not bad. So I  
13 cringed. That was one reaction.

14 Another reaction is it was unfair. I thought it was  
15 unfair in a lot of ways. There was one exhibit they kept  
16 showing you, you know, I don't think any person on the actual  
17 e-mail testified, but it just popped up regularly. It was the  
18 e-mail in which Ruja Ignatova apparently asks Mr. Courtneidge  
19 and Mr. Scott about whether it's okay to store a large amount  
20 of British pounds in London. And then there some chains like,  
21 have you discussed this, did someone get back to her. Yes. We  
22 did. And they want you to assume, you know, so probably -- I  
23 mean, I assume they want you to assume probably something bad  
24 happened here. Probably they did it. That strikes me as  
25 unfair because we don't know the rest of the story. There is

JBK3SCO4

Summation - Mr. Devlin-Brown

1 no evidence of the rest of the story. I can't cross-examine  
2 that e-mail.

3 But the third thing they did, in addition to making me  
4 cringe and feel they were unfair, is to paint a picture of Mark  
5 that's actually remarkably consistent. It's actually  
6 remarkably consistent. Because Mark doesn't vary. He doesn't  
7 vary from what he is telling people in 2016, what he's telling  
8 Apex, even what he's telling the FBI. He has this world view,  
9 and he's consistent across the case.

10 And his world view, when you read all these e-mails  
11 together, is this: That Ruja Ignatova, it's clear she wants  
12 confidentiality and that Mark is going to provide it as much as  
13 he can. He is not going to lie about OneCoin if asked, but  
14 he's going to provide it, and he also has what is frankly a  
15 pretty narrow conception of what KYC is. Of what know your  
16 customer stuff is. I mean, you see it again and again. Right.  
17 His view, right, is money is coming to me from company X. So,  
18 company X, is it legally incorporated? Is it on the register  
19 of this country? Does it have shareholders? Do the  
20 shareholders have their documents in order? That's scrutiny he  
21 provides.

22 And it's interesting, the money laundering expert I  
23 think was actually very helpful. He made clear these so-called  
24 shell companies the government is talking about, there is  
25 nothing illegal about creating them. There is nothing illegal

JBK3SCO4

Summation - Mr. Devlin-Brown

1 about having nominee directors. These things by themselves are  
2 not illegal. They can be used for illegal things, but they are  
3 not illegal.

4 And Mr. Scott's world view consistently is that's my  
5 job. I make sure the company sending me the money has its  
6 things in order. That's my job. It's not to go beyond that  
7 and say, you know, who is the client of the company who may be  
8 influencing the decisions. Is he going to win banker of the  
9 year and get a job in the Bank of New York Mellon compliance  
10 department? No, he's not. But, that's not what this is about.  
11 This is about a trial for his life. Or for -- it's not about  
12 whether he had the correct understanding of what kind of know  
13 your customer stuff he should do.

14 This is one of those things that fits in the category  
15 it only matters if. You can have a code like that, a view like  
16 that is what I think due diligence should be, because I want to  
17 protect people's confidentiality. And maybe that's right or  
18 maybe it's wrong. But it's only money laundering, it's only  
19 money laundering if the reason you are doing that is because  
20 you are trying to conceal money that you know comes from a  
21 crime. That you know comes from a crime. And that's a leap  
22 that the government wants you to take that really just is not  
23 supported.

24 So, I want to just show you some of these e-mails.  
25 The government probably showed you some. I want to flash

JBK3SCO4

Summation - Mr. Devlin-Brown

1 through them because this is the consistent worldview.

2 Hi Ruja, let me know from which company and which  
3 country the first 50 million are paid. I must prepare here  
4 basic KYC -- I won't read them all. He asks questions. Is all  
5 money originate from one company or several are private.  
6 Unfortunately -- this is the middle paragraph -- KYC is kept  
7 very low. I have to leave it up to you. If companies transfer  
8 the funds I need the articles of association, a copy of the  
9 passport of the undersigning party.

10 This is consistent. This is what he says again and  
11 again and again. The lawyers are going through the KYC now to  
12 comply with their obligations, optimize it for banks. And I  
13 think is his worldview too: We have to do it right.

14 In Mark Scott's mind, I submit, that's doing it right.  
15 He has similar communications with Irina Dilkinska, making sure  
16 that the documents come together. I think you get -- I'm not  
17 meaning to rush you, but i also don't want to delay things too  
18 much. He keeps asking those questions again and again.

19 And the reason you know it's his code is you are going  
20 to see it's consistent. It happens again and again. And you  
21 are going to learn that really from Apex. Because I think Paul  
22 Spendiff was a very, he was an excellent witness to have here.  
23 Not because he knows anything about what's going on really in  
24 Mark Scott's head, but because that relationship blew up, I  
25 think it revealed Mark's true colors, and his true colors were

JBK3SCO4

Summation - Mr. Devlin-Brown

1 totally consistent with the worldview he's articulated from day  
2 one.

3 So this is the form in Government 2209, the  
4 subscription form for BNY Consult EOOD. It lists the owner,  
5 the director, and there were questions I remember on direct  
6 examination, general nature of company partnership's  
7 operations. Sales and marketing consulting. You know, that's  
8 consistent. B&N, IMS, they were working, it seems, with Ruja  
9 Ignatova's OneCoin. Which is of course sold through  
10 educational packages, has to be marketed. Maybe they were  
11 working with other customers too. It says general nature.  
12 Right? It doesn't say list everything. There is no place  
13 write OneCoin in there. So it is a narrow view, but it's not a  
14 lie.

15 But this is why it paints the picture. Because that's  
16 what you have, sorry, back in when the subscription first comes  
17 on. But then, when it comes to it, when they're really getting  
18 heated up, he doesn't hesitate to bring in OneCoin. He says  
19 OneCoin is a client of IMS. He sends, remember the bank  
20 statements, which in one of the only more theatrical moments  
21 that I tried to pull off at trial. I am doing it again. That  
22 was not on purpose. These statements, when printed out, they  
23 filled a box. He was not hiding OneCoin. He wasn't going to  
24 volunteer it, but he wasn't at the end of the day going to say,  
25 no, it's not that. He answers the questions. IMS runs

JBK3SCO4

Summation - Mr. Devlin-Brown

1 separate accounts, received and manage the sale of proceeds of  
2 OneCoin.

3 So, I am going to go through the Apex story in a  
4 little bit more detail. But I want to press pause one more  
5 time. Because, one of the things the government said in its  
6 summation was words to the effect of do you see any legitimate  
7 deals? Do you see anything legitimate going on here?

8 I remember those charts from Ms. October, there were  
9 lots of things, there was all sorts investments all sorts of  
10 entities. We don't have the burden of proof. If the  
11 government wants to prove that everything Mr. Scott did was a  
12 sham, that there were no real investments, they're welcome to  
13 that. I didn't -- I saw lots of entities on that list. Lots  
14 of deals that I knew nothing about that. There was no  
15 testimony about them.

16 When you look narrowly at things, and you think about  
17 Apex, you think oh my God, this whole Fenero Funds thing blew  
18 up. We didn't hear any problems with JP Integra, there was  
19 another fund administrator that worked Mr. Mr. Scott. First  
20 Caribbean Bank, they had accounts with Mr. Scott, didn't hear  
21 anything problematic there. Deutsche Bank Cayman had accounts  
22 with Mr. Scott. Didn't hear anything problematic about the  
23 relationships there. Even Bank of Ireland, which they did  
24 not -- I mean, Bank of Ireland, I submit, cared so little about  
25 what Mr. Scott said that they weren't going to come over here

JBK3SCO4

Summation - Mr. Devlin-Brown

1 and testify about it.

2 So, there was something else about Apex that I think  
3 the government got wrong in their summation. They said that  
4 the whole explosion happened when Mark Scott accidentally, they  
5 said, forwarded something with the OneCoin e-mail address.  
6 That's not what the cause of the explosion was. The evidence  
7 is very clear. Mr. Spendiff testified that on Friday, July 29,  
8 he had some meetings and that resulted in a determination that  
9 they were going to do enhanced due diligence on the Fenero  
10 Funds, then they worked over the weekend. Exhibit on the  
11 right, Government Exhibit 2262. This is Saturday, July 30.  
12 The day after they send that enhanced due diligence request.  
13 This is the e-mail that Mark Scott forwards, a day after  
14 they've started their request. That's the one with OneCoin.eu.  
15 And by the way, cc'd is Ruja Ignatova. This is not, I would  
16 submit, hiding names. And Mr. Spendiff was clear on that when  
17 we went through the evidence. Mr. Scott didn't hide Ruja  
18 Ignatov's name did he? Right. No, he did not. Right. And I  
19 remember asking him about the two deals because it was only two  
20 that Apex did with Ms. Ignatova. I mean, with the Fenero  
21 Funds. And in both of those, Ruja Ignatova's name was on it  
22 somewhere.

23 In the first deal, which involved -- by the way, the  
24 government said all the deals are bogus. I don't remember  
25 seeing any proof that the investment in PCT Holdings, a credit

JBK3SCO4

Summation - Mr. Devlin-Brown

1 card company, was bogus. I didn't see any evidence of that.

2 And Irina Dilkinska's name is on there. Payment Cloud Holdings  
3 Limited, that's the same company. In the documentation  
4 prepared by this law firm, Ruja Ignatova's e-mail address is on  
5 there for investor. RavenR is on there.

6 The other deal, the Neil Bush deal, and also, pause  
7 again. The government says that's all bogus. There's been no  
8 evidence that that oil field deal wasn't real. There's been no  
9 evidence that Neil Bush wasn't in fact traveling to China and  
10 being part of this transaction. So this was the oil field  
11 deal. The second one. And it was structured as a loan, but  
12 underlying the loan there was going to be a purchase of an oil  
13 field. And the company that created to do that? Cryptoreal.  
14 Crypto. If you are trying to hide your cryptocurrency  
15 connection, that's probably not a great one. But he sends  
16 that.

17 And then this was probably my favorite. Ruja  
18 Ignatova, listed there on the bottom, signs it. And to top it  
19 all off, it's going to be paid for in those OneCoins. So  
20 Mr. Scott was not hiding Ruja Ignatova.

21 So, what happens next at Apex is really, as I said,  
22 what shows the true colors. And I submit that Mr. Scott and  
23 Mr. Spendiff are a little like oil and water. This was like a  
24 classic case, you could sort of see coming what was coming.  
25 Because Mr. Spendiff testified that they had these concerns,

JBK3SCO4

Summation - Mr. Devlin-Brown

1 right, about OneCoin.

2 Well, actually, first, before he saw the e-mail about  
3 OneCoin he had concerns about due diligence and wanted to do a  
4 thorough review of the funds. The next day, he got that e-mail  
5 with OneCoin. Then he went back and saw there was actually  
6 some other ones. And then he testified he didn't tell  
7 Mr. Scott what his concerns were. And he explained that by the  
8 phrase "tipping off," which forbids once you've made a type of  
9 notification, from discussing or notifying parties involved in  
10 the transactions about the fact you've notified these agencies.  
11 And I remember asking him again and again, like, where does it  
12 say here -- I mean, I get you can't tip someone off we've filed  
13 some report. Where does it say you can't say can you tell us  
14 more about OneCoin because we are seeing that name a lot. Or  
15 we are going to have to press pause on this thing for a week or  
16 so. It doesn't say you have to string someone along, which I  
17 submit is exactly what happened.

18 I don't want to go through all the documents, but I  
19 don't think we need to in the interest of time. But, Friday,  
20 July 29, that's when the enhanced due diligence kicks off. And  
21 at the very bottom, by the way, we are not paying any money out  
22 of Fenero Funds until this is cleared up. Apologize for any  
23 inconvenience.

24 THE COURT: Mr. Devlin-Brown, I have to stop you for a  
25 minute. Can we just have a talk at sidebar.

JBK3SCO4

Summation - Mr. Devlin-Brown

1 MR. DEVLIN-BROWN: Sure, your Honor.

2 (At the sidebar)

3 THE COURT: We've gotten a call from Danielle Love  
4 Manning that her baby is sick and getting sicker. And so, I  
5 propose to let her know that, and let us know what if anything  
6 she needs to do. Okay.

7 MR. DEVLIN-BROWN: Very good.

8 (In open court)

9 THE COURT: Ladies and gentlemen, we are going to take  
10 a very quick break. And I'll want to speak with one of the  
11 jurors.

12 (Jury excused)

13 (In the robing room)

14 THE COURT: Hi, Ms. Love. We got a call from your  
15 nanny. You have a baby? The baby is sick. And she wants you  
16 to know that, and so, just letting you know. I take it you  
17 don't have your phone. You want to leave?

18 JUROR NO. 10: I don't know. Depending how sick she  
19 is.

20 THE DEPUTY CLERK: I believe what she said was that  
21 the symptoms from this morning are persisting.

22 JUROR NO. 10: Oh. Is there a way I can call my  
23 husband or something?

24 THE COURT: Yes. You can use the phone in there. Is  
25 there a phone in there?

JBK3SCO4

Summation - Mr. Devlin-Brown

1                   THE DEPUTY CLERK: Yes.

2                   (In open court; jury not present)

3                   THE COURT: I can talk to the lawyers, it doesn't have  
4 to be on the record.

5                   (Sidebar discussion off the record)

6                   (Pause)

7                   THE COURT: Mr. Devlin-Brown, can I inquire as to how  
8 much more you think you have?

9                   MR. DEVLIN-BROWN: I think about 15 to 20 minutes.

10                  THE COURT: Okay. We're bringing the jury back out.

11                  (Jury present)

12                  THE COURT: Thank you for your indulgence, ladies and  
13 gentlemen. Mr. Devlin-Brown.

14                  MR. DEVLIN-BROWN: Thank you, ladies and gentlemen.

15                  So, we were talking about Paul Spendiff and Apex and  
16 Mr. Scott. And this conflict they really got into in the last  
17 week or so of their relationship. A conflict that I submit to  
18 you is explained by Apex and Paul Spendiff developing certain  
19 concerns that they didn't really want to tell Mr. Scott. And  
20 so they strung him along, and they asked question after  
21 question, and I think the reason is, they were hoping Mr. Scott  
22 would put them out of their misery and fire them. You heard  
23 Mr. Spendiff testify it is actually very difficult for a fund  
24 administrator to fire their client that they're managing  
25 because it's supposed to protect investors. I think that's

JBK3SCO4

Summation - Mr. Devlin-Brown

1 what he wanted.

2 And there is also an indemnity provision which could  
3 have cost him a lot of money. I am not going to try to explain  
4 that one again because I think I confused myself when I was  
5 asking questions about that.

6 He was concerned if he broke off with Mr. Scott and  
7 sent him on his way, he could get sued, and Mr. Scott was  
8 certainly threatening to sue him. He was talking about  
9 payments due. So I don't think we need to dwell on this,  
10 because I think people have the picture. These are all in  
11 evidence. But, you can just sort of see the frustration  
12 mounting.

13 So, the whole thing started right on July 29 and then  
14 Mr. Spendiff and Apex work over the weekend, they'd asked  
15 Mr. Scott for a bunch of things on July 29. He responds over  
16 the weekend. This print in this is small, and really the point  
17 of showing it to all of you was it seems like a lot more  
18 questions. So, they asked questions, they give suggestions.  
19 Maybe you have something from Locke Lord. Mr. Scott sends  
20 something I think. Let's see just the timing of that. The  
21 very next day. It goes on and on and, oh. This is why I  
22 showed you that. So this Cryptoreal oil deal. You see 30  
23 million due day of signature of contract and 30 million due  
24 within 20 days? That's bringing you right into early August.  
25 Right. So Mr. Scott starts agitating, we need to pay this

JBK3SCO4

Summation - Mr. Devlin-Brown

1 bill. And we are getting unbelievable pressure. Original  
2 closing date for second tranche was August 4. And he's just  
3 getting stalled and stalled and stalled.

4 And so, ultimately, right, at the beginning of the  
5 relationship, this is what is being filled out on the  
6 subscription document. Ultimately, they're speaking, talks  
7 about OneCoin on the call. He becomes completely open about  
8 OneCoin. He sends those documents. That box of documents from  
9 IMS which show purchases of customers of the OneCoin packages.  
10 And that's essentially how that ends.

11 But I think we didn't play much of the call when Mr.  
12 Spendiff was here. It was a long day. I am not going to play  
13 it for you now either. But it is in evidence. There is a  
14 transcript, 2302-TR. There is the audio itself. And I submit  
15 to you that on that call, under this intense pressure,  
16 Mr. Scott sticks by exactly what his position has been all the  
17 along. And that is that I've given you the information on my  
18 clients, on IMS and B&N. Those are my clients. He tells Mr.  
19 Spendiff, I don't have OneCoin money too. He tells him it's  
20 not, I don't have OneCoin money. I have money from IMS, from  
21 other companies. If they get money from OneCoin, that's their  
22 issue. And he doesn't say anything in here either, by the way,  
23 that suggests he thinks OneCoin is a fraud. There is nothing  
24 in there at all. And it's revealing, again, of his true  
25 colors. And the view he had, right or wrong, not that anything

JBK3SCO4

Summation - Mr. Devlin-Brown

1 about OneCoin being a problem, but right or wrong, his view  
2 that the information you provide to banks and others is the  
3 information about the companies investing with you, you don't  
4 have to go beyond that. You tell them if they ask you, but you  
5 don't have to go beyond that.

6 The government brought up the post-arrest statement  
7 that Mr. Scott made. So he was arrested early in the morning,  
8 he goes down to -- I forget if it was the FBI or the local  
9 police department. Wherever it was. And it's early in the  
10 morning, and I think the testimony was they talked to him for  
11 an hour or more. You heard some sound clips. It's totally  
12 proper, the government is entitled to pick what they play.  
13 That's what the rules provide. So that's absolutely proper.  
14 But, from these snippets, even what you hear here, Mr. Scott is  
15 consistent. He is maybe not at his finest hour, but you hear  
16 these same things.

17 You remember the question or the part that Mr. Folly  
18 read of really the only thing in here that I think could be  
19 called a problem. And the question was so Fenero was not  
20 involved with OneCoin at all? And Mr. Scott says no. Then  
21 Agent Eckel says not at all? And he says, I mean no contracts  
22 or anything so far as I know. That's the worldview he's always  
23 sort of had. OneCoin's not involved. They might fund my  
24 client, but it's not OneCoin. Then Agent Fata says, okay,  
25 funded by OneCoin. No, not that I know of. We have no

JBK3SCO4

Summation - Mr. Devlin-Brown

1 documents that would say that. Then he starts talking about  
2 KYC.

3 I am not presenting this as Mr. Scott's finest hour.  
4 But walked in, voluntarily, talked to the agents, on the day of  
5 his arrest, on a day -- put away 20/20 hindsight. Right at  
6 that point when he is being arrested, he sure knows there is  
7 some problems with OneCoin, at least enough to get him  
8 arrested. And so it's not his finest hour. But you can still  
9 see, even here, even here that same worldview that keeps coming  
10 out.

11 Just very quickly, the Apex situation, I didn't  
12 mention the things signed with different pens or the contract  
13 that was changed. Two quick points on that. One is, you have  
14 to see that in the context of what was happening which was  
15 constant requests by Apex, to get us stuff, get us stuff. And  
16 Mr. Scott's trying to make them happy. Whatever he gives them  
17 doesn't seem to make them happy, because they don't really want  
18 to do anything with him. So, yes, he changes a 1 percent on a  
19 contract to 20. And he signs a bunch of authorization letters.  
20 These are from his clients, right. Where is the evidence that  
21 1 percent was the wrong -- was the correct amount? 20 percent  
22 is a higher number. That's I think more realistic. Where is  
23 the evidence he didn't get permission from his client to change  
24 it? These are his own clients.

25 So, after the Apex situation, the worldview that

JBK3SCO4

Summation - Mr. Devlin-Brown

1       Mr. Scott has, Mark's code, that explains kind of how things  
2 end I think as well. Because Mark does have within this sort  
3 of code limits to what he is going to do.

4                   So take a look at this exchange, it's September 2016.  
5 And Mr. Scott asks Hi Irina, I need to understand status of  
6 Innoin's KYC. It has not yet passed KYC. We'll discuss with  
7 David and get back to you. He asks why can't it invest for  
8 itself. Why does it have to invest with B&N. She says Hi  
9 Mark, because the KYC. Not sure I understand.

10                  This goes back and forth a bit. Sorry. There is --  
11 Irina is making suggestions. And not a good idea. Do we even  
12 have enough for Innoin to accept it as an investor? Then there  
13 is a response, Dr. R, I assume that's Ruja, ceased to be  
14 director, she was replaced by Fernando. But the shareholder of  
15 the company remains Dr. R in HK for all banking purposes etc.  
16 The onus is on the director. David Pike asks a question. Not  
17 good, he has problems in Germany, and this is DB. Are you  
18 going to handle the conversation?

19                  We don't know how it's handled one way or the other.  
20 Here is another example. We talked about this one during the  
21 testimony. Ruja Ignatova wants to park 2.5 million in a  
22 Zimbabwe bank. He asks for background. Sorry. I may have --  
23 I think we may have put the wrong snippet from the slides, but  
24 this is in 1129, and Mr. Scott ultimately rejects the deal,  
25 says it's too risky for his funds. But this one I think is

JBK3SCO4

Summation - Mr. Devlin-Brown

1 actually really illustrative of what's going on in the  
2 relationship between Ruja Ignatova and Mark Scott. By the time  
3 you get to October of 2016. Because now he is just frankly  
4 being belittled.

5 So, he writes to one of these people at RavenR to ask  
6 to schedule a visit for PCT, that's the card issuer company  
7 that he bought. Again just for compliance purposes, no  
8 discussion. And Ruja, Mark, I don't remember to have been  
9 asked about this meetings. I don't see a need for this. Thank  
10 you. And he responds, we really need something for the  
11 regulator, let's please discuss. We can, as you say, discuss.  
12 PCT know exactly who their investor is. No need to bother and  
13 confuse people. If regulator has issues I can go somewhere  
14 else. I am not sure why this is an issue, Mr. Scott says.  
15 Najib can sit down with David for us to have a record.  
16 Otherwise, let's sell the investment to your other option. I  
17 can't hold it without reporting it.

18 And that prompts Ruja Ignatova's final response: What  
19 is the update on the trust? When we started this you said you  
20 had no issue. Now it is an issue. I am not happy that a part  
21 of this now I have to handle and in the meantime I have risk  
22 that something might happen to you or my money. It cannot  
23 always be delayed. Get a written report from PCT and that's  
24 it.

25 This is around when things start to end. And you can

JBK3SCO4

Summation - Mr. Devlin-Brown

1 see that here Mr. Scott says in the middle paragraph as to the  
2 general risk concern I agree. I will deliver you proposed  
3 transfer of all capital. He describes how he thinks it should  
4 be done. And he says at the ending in there I will structure  
5 it so I can be removed.

6 I think the government and defense are largely in  
7 agreement here. This is Ruja Ignatova, she has some snippy  
8 e-mails that were sent. This is my money, send it back. I  
9 don't care about your niceties, I need it. And eventually, he  
10 does that. This is in February 2017. He makes arrangements to  
11 send the money to Phoenix Investments, gets sign off from the  
12 companies that sent the funds in. This happens around the same  
13 time. You remember this e-mail. There was a London police  
14 investigation that was reported and referred to in  
15 October 2016. And there was this e-mail that Mr. Konstantin  
16 testified about.

17 (Continued on next page)

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JBK9SCO5

Summation - Mr. Devlin-Brown

1                   MR. DEVLIN-BROWN: (Continuing) Because these folks  
2 at RavenR who Mr. Konstantin said always seemed like  
3 professionals. They're starting to get a little nervous.  
4 RavenR, right. They're managing OneCoin's money. Ruja's money  
5 anyway. They're starting to get a little bit worried and  
6 Mr. Konstantin said: You know what, I didn't really hear from  
7 Joanne Allison much after that. I think the implication, I  
8 don't know what actually happened, but you could think I don't  
9 know if I want to work there anymore.

10                  And you know what the same implication is there for  
11 Mark Scott. Remember after there's lots of e-mails. Ruja is  
12 trying to schedule appointments. Mr. Scott is making excuses.  
13 He's out of this. He's out of this. He's returned the money  
14 by -- he's made this arrangement in February or March. All of  
15 the money except a legal retainer is returned by July 2017 and  
16 he is out of it. He is out of it.

17                  You know, Mr. Scott, I said at the beginning of this  
18 trial, is a stubborn man. He's a stubborn man. He had a view  
19 of the way things should be done. He had a view of what was OK  
20 and what was not OK. But he had a breaking point. And it was  
21 enough. And he left.

22                  And, again, others leave and they can be patted on the  
23 back. Good job. And Mr. Scott is in this situation.

24                  So I'm coming to an end here. And I'm leaving you  
25 with the most cryptic reason why you should have reasonable

JBK9SCO5

Summation - Mr. Devlin-Brown

1 doubt.

2           And that is Mark is a lion. So when I was thinking  
3 about this case, and I've been thinking this for a while.  
4 There is a parable: The wicked flee when no man pursueth; but  
5 the righteous are bold as a lion. And I keep -- that's been  
6 going on in my mind for a while. I keep thinking of Mr. Scott  
7 as the lion here. That's the right parable. Because Ruja  
8 Ignatova, you know, October 2017. She's not in the U.S. but  
9 she -- she's gone. She knows what's going on. She vanished.  
10 Agent Shimko I believe testified they can't find her.

11           What about Mark Scott? A little over a year ago.  
12 Where is he arrested? His house in Cape Cod. In his name.  
13 You know. They go after his yacht in his name, his boat,  
14 whatever. His bank account is in his name. He stayed. But  
15 this isn't just about that moment of arrest. It's really not.

16           Remember I told you in the opening statement that one  
17 of the challenges in this case was you're going to have to get  
18 inside Mark Scott's head, right. And try to figure out what's  
19 going on. And it's the government's burden to prove that what  
20 was going on there was that he knew the money coming in to him  
21 was illegal.

22           That's going to be hard. It's going to be hard  
23 especially with 20/20 hindsight. You know, we saw those  
24 OneCoin videos and they look kind of absurd now. Some have  
25 high production values. But they look absurd. And you hear

JBK9SCO5

Summation - Mr. Devlin-Brown

1 the government's evidence and you hear the victims and you see  
2 these pictures -- I mean it looks disgusting now. But it's  
3 hard to go back in time and see what were people actually  
4 thinking about it at the time. And the judge is going to I  
5 think say something in his instructions at some point. It's a  
6 phrase that everyone knows, really: Actions can sometimes  
7 speak louder than words. And I think that's absolutely true  
8 because Mark has sort of been the lion the whole way through  
9 this, you know, right or wrong about his views on things. He  
10 has been the lion. He set up all these funds not in some  
11 sketchy location. He went to the BVI.

12           And I made sure to ask the witnesses about this  
13 because I don't know what preconceptions people have about the  
14 British Virgin Islands. It's a very popular location for  
15 private equity funds. It's reputation as being a sketchy place  
16 has changed dramatically over the years. They report tax  
17 information to the U.S. authorities. That's where he set up.

18           Remember, Mark Scott hired Apex. I tried to get  
19 Mr. Spendiff to say, you know, you're probably one of the  
20 better administrators. He was polite. He didn't say that. He  
21 goes out and hires a firm like Apex to police his investors.  
22 He sets it up in a place that has real regulations. He gets  
23 all of the government approvals done and he puts his own name  
24 on everything.

25           I mean you had all these complicated charts, right.

JBK9SCO5

Summation - Mr. Devlin-Brown

1 But it's all like Mark Scott to Mark Scott to Mark Scott to  
2 Mark Scott. Sorry. Someone through his attorney, you know, to  
3 buy some properties. But this is not a guy who was hiding  
4 anywhere. And he reported his foreign bank accounts to the  
5 U.S. authorities. Mr. Garvin showed you his tax returns. I  
6 mean it wasn't in 2018 either. He filed -- they're all in  
7 evidence. Tax returns. Every single year reporting his income  
8 to the IRS.

9 You know the wicked flee when no one pursues and the  
10 righteous are bold as a lion. And someone who thinks that  
11 OneCoin is a scam, why are they doing this. Why are they doing  
12 this? Why are they making themselves such a mark?

13 And I submit because he didn't think, he didn't think  
14 OneCoin was illegal. He thought what he was doing was right.

15 I'm reminded, this is the final slide I will show you,  
16 I remember when the government showed it at the beginning of  
17 the case and some people are prescient, right. Dr. Ruja  
18 Ignatova to Sebastian Greenwood: Exit strategy. My thoughts.  
19 Option one. Take the money and run and blame someone else for  
20 this. You know, here's looking at you, Ruja, wherever you are.

21 And I have one more one more animal and then I'm going  
22 to sit down because this occurred to me too.

23 So there's lions, right, and in ancient Israel there  
24 was this tradition at the end of every year where the holy  
25 people would sort of take the sins that are on the public and

JBK9SCO5

1 cast them down onto a goat. Literally a goat. Then they would  
2 send that goat out to wander the desert to his death. And the  
3 people would feel better; the goat, maybe not. And that word  
4 is actually still used today, scapegoat.

5 And I think you know when you're sitting here and when  
6 you go into the room and deliberate, OneCoin was a scam. There  
7 is no question about it. People lost money. You know should  
8 Mr. Scott keep his boat? I don't know. This isn't a civil  
9 case. This is a criminal case where Mr. Scott is facing very  
10 real consequences. It's about proving beyond a reasonable  
11 doubt, if the government can do it, that what was going on in  
12 his mind at the time when he was doing all these things in his  
13 own name was that he knew the money from OneCoin was illegal.

14 It's really about the two witnesses who each met him  
15 once. It's about a lot of e-mails that no one knows the  
16 meaning of.

17 And you know I think when you go back in there,  
18 there's goats and there's lions. And you have to kind of  
19 decide which animal is Mr. Scott. What's really true to his  
20 nature and what kind of animal he's going to be. Because I  
21 submit to you, ladies and gentlemen, based on all of the  
22 evidence Mr. Scott did not know OneCoin funds were illegal.  
23 That's the issue on trial. And he is not guilty. Thank you.

24 THE COURT: Thank you, Mr. Devlin-Brown.

25 Ladies and gentlemen, we'll take another ten minutes,

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Mr. DiMase - Rebuttal

1 brief break so that the government can set up for its rebuttal.

2 (Jury not present)

3 THE COURT: Everyone can be seated. I take it,  
4 Mr. DiMase, you'll be doing the rebuttal?

5 MR. DiMASE: That's correct.

6 THE COURT: I want to get a sense as to the time.  
7 About how long do you think you'll be?

8 MR. DiMASE: I would say 30 to 45 minutes. No longer  
9 than that. Possibly less than 30.

10 THE COURT: Because I'm trying to figure out whether I  
11 can do the charge this afternoon. Are you going to go well  
12 beyond a half-hour, then I may not be able to. But we'll see  
13 where we go. OK.

14 (Recess)

15 (Jury present)

16 THE COURT: Mr. DiMase.

17 MR. DiMASE: Thank you, your Honor.

18 Mark Scott's worldview is to lie and cheat and profit  
19 off of the backs of other people. Mark Scott is not a lion.  
20 Mark Scott is a liar.

21 MR. DEVLIN-BROWN: Objection.

22 THE COURT: Overruled.

23 MR. DiMASE: To call him a scapegoat, a partner at an  
24 international law firm who earned \$50 million for laundering  
25 OneCoin fraud money. The man who masterminded all of those

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Mr. DiMase - Rebuttal

1 transfers, all over the world to hide Ruja's money, to call him  
2 a scapegoat. Absurd.

3 Mark Scott would have you believe, in his worldview,  
4 that he was duped; that he was fooled into committing crimes by  
5 other people. He'd have you believe that despite the fact that  
6 he is a partner at a law firm, that he had received an e-mail  
7 detailing this fraud scheme and exactly how it worked. All of  
8 his lies, his false documents, his cryptophone, the fact he  
9 made no real investments, the fact that he earned \$50 million  
10 for nothing, and the fact that he lied to the FBI. He wants  
11 you to believe he had no idea that he was just a babe in the  
12 woods just investing his investors' money.

13 And he has to say that because there are only two  
14 options here, ladies and gentlemen. One, he thought these  
15 investment funds were real and he was really investing Ruja's  
16 money or the investors' money, purportedly; or second, that he  
17 set up the funds for the exact purpose that they were used for:  
18 To launder the money.

19 The only question is whether Mr. Scott, a trained  
20 professional, a man who was in the inner circle with Ruja  
21 Ignatova, knew that OneCoin was a fraud and that the Fenero  
22 Funds were there to launder its proceeds. And the fact is,  
23 ladies and gentlemen, it's Mark Scott who has been doing the  
24 duping. His worldview is that he can lie and commit crimes as  
25 long as he can get away with it.

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Mr. DiMase - Rebuttal

1           There's a third witness who met Mr. Scott that you  
2 didn't hear about. Remember, there were two. And that's agent  
3 Christine Fata. You know why the defense didn't mention  
4 Mr. Scott's meeting with that witness? Because Mr. Scott lied  
5 when he was arrested.

6           There is a mountain of evidence in this case that  
7 Mr. Scott not only knew but he set up the funds for that exact  
8 purpose, that it was all, in his own words, smoke and mirrors.

9           Now, I'm not going to have time to address every point  
10 that Mr. Devlin-Brown made given the length of time I have here  
11 today. And for example there are a few things I want to just  
12 quickly go through. I mean who knew Mr. Scott at this trial  
13 who testified? Completely irrelevant. You have seen tens if  
14 not hundreds of e-mails of the defendant himself. That there  
15 were two or three witnesses who met Mr. Scott, and many more  
16 that were affected by his conduct but didn't meet him directly,  
17 has no bearing on the outcome of this case. You have the  
18 evidence.

19           I'm not going to focus on iCard. You know what that's  
20 about. The evidence makes it clear. The e-mails make it  
21 clear. You know where that money came from and where it went.

22           Bank of New York Mellon whether they shutdown OneCoin  
23 or not, they took the right steps. You heard that. And they  
24 did exactly what Mr. Scott should have done. Not take a dime.  
25 And as soon as you find out stop and report it to the

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Mr. DiMase - Rebuttal

1 authorities. That's what Bank of New York Mellon did.

2 This idea of the blockchain. It's just a red herring.

3 You don't need to know anything about the blockchain to know

4 that OneCoin was a scam. Double your money overnight?

5 Konstantin Ignatov knew well before he learned about the

6 blockchain issues that OneCoin was a total fraud. The CPA knew

7 way before and so did Scott, knowing anything particular about

8 the blockchain.

9 And the idea that Scott told Paul Spendiff or any

10 other bank that OneCoin was behind this money is preposterous.

11 I don't know what trial Mr. Devlin-Brown sat through. The

12 entire point of this exercise was to hide that from the banks,

13 the fund administrators and other people.

14 Mr. Scott knew what this was about. Look who brought

15 him into it. Gilbert Armenta, the same person that the defense

16 is saying is a huge liar. We agree. That's why Mr. Scott

17 worked with him, to launder OneCoin money. And that's the guy

18 who brought him into this scheme.

19 And even assuming if he didn't know it in that first

20 e-mail that you saw that Mr. Devlin-Brown focused on he sure

21 did know pretty soon after that. All of the e-mails you saw

22 show he knew what he was doing, what he was getting into. And

23 he read that e-mail. The idea that Mr. Scott, a trained

24 lawyer, whose job it is to do diligence, investigate things,

25 follow up on facts, would get an e-mail that says OneCoin is a

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Mr. DiMase - Rebuttal

1 scam before taking in four hundred million dollars of its money  
2 and not read it? That is bananas. He read it. He already  
3 knew but he read it. He knew exactly what he was getting into.

4 This box of IMS statements by the way that Mr. Scott  
5 had, you know how many hundreds of OneCoin victim deposits are  
6 in here? He had this entire box of documents.

7 You don't need hindsight. Double your money  
8 overnight. OneCoin is a scam. And all of the other evidence  
9 in this case. Mark Scott knew.

10 Let's talk for a minute about the idea of the  
11 appearance of legitimacy of these funds, the idea of KYC, this  
12 issue of Mark Scott's worldview. Mr. Scott is a trained  
13 lawyer. He knows exactly what KYC and due diligence is. He  
14 knows and knew what those banks were after. Who was sending  
15 that money in. He knew it. And this whole system, the whole  
16 investment fund structure was designed to confuse and hide from  
17 the banks who this money really belonged to so that he could  
18 move Ruja's money through those banks and clean it.

19 The purpose of it was to look legitimate. That was  
20 the whole point. Just like Don Semesky the money laundering  
21 expert told you and just because other banks and other lawyers  
22 and entities around the world were handling OneCoin money  
23 proves nothing because you know what OneCoin and Mark Scott  
24 did. They lied to everybody.

25 And when they got caught, it got shut down. See Apex.

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Mr. DiMase - Rebuttal

1 See Bank of New York Mellon. That's why they had to do it.  
2 They were playing a delicate game and, as Mr. Pike said,  
3 Mr. Scott did it well.

4 Even in the closing statement today Mr. Devlin-Brown  
5 takes two totally inconsistent positions. Yes. It was Ruja's  
6 money. The defense is not contesting that. But he holds on to  
7 this idea that IMS and B&N were clients. We all know that's  
8 fake. They weren't real. B&N did nothing. IMS did nothing.  
9 Star Merchant did less than nothing, the guy who didn't have a  
10 house or a bank account. They were shells. They were shells.  
11 They were nominees. The whole thing was fake in order to move  
12 money through these banks and financial institutions and  
13 launder it. That's what this was. But it was meant to look  
14 real.

15 By the way, if it were real or this was really about  
16 anonymity, about privacy for Ruja, Mr. Scott had quite an  
17 opportunity to explain that to the FBI and the IRS. But you  
18 know what he did. He lied. Because he knew what he was doing  
19 was criminal.

20 So let's talk for a moment about how you know it was a  
21 criminal business and not a legitimate one. So let's say you  
22 go into your office on a daily basis to your job and you want  
23 to get your boss on the phone. What do you do? You pick up  
24 the phone and you dial him. If you're Mark Scott, what do you  
25 do? You pick up a cryptophone, you dial a complex alphanumeric

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Mr. DiMase - Rebuttal

1 code and you reach Ruja. OK. To avoid law enforcement  
2 detection.

3 So you're going on a business trip for work, right.  
4 In a legitimate business you book your flight to the place  
5 you're going. If the company will pay direct you're going to  
6 take that. Mr. Scott, if you look at Exhibit 1270, what did he  
7 do? Well he didn't want Sofia showing up on his travel records  
8 because that's where OneCoin was located and he was concerned  
9 about that. And if you look at his travel records you'll see  
10 that he booked through places like Frankfurt to hide where he  
11 was going. That is not legitimate.

12 You find out your colleague is talking behind your  
13 back at work. In a legitimate business that's a case of office  
14 gossip. In Mr. Scott's business, it's a countersurveillance  
15 operative claiming that you're an informant. That's because  
16 Mr. Scott was involved and knew things about the criminality of  
17 OneCoin. He was in the inner circle.

18 And hopefully this one doesn't happen to any of you.  
19 But if you're in a legitimate business and the FBI asks to  
20 speak with you, you tell them the truth. You have nothing to  
21 hide. Not Mr. Scott.

22 There are other examples, hiding from his law firm  
23 that he was doing this. Getting paid outside of the usual  
24 channels. The list goes on and on. Mr. Scott knew that this  
25 was a criminal business.

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Mr. DiMase - Rebuttal

1           Let's get a little bit more specific. What are the  
2 ways you know that this was a fake investment fund? Well he  
3 copied and pasted his track record -- I mean you can go and  
4 pull stuff off the internet to make your life easier, no need  
5 to reinvent the wheel, but your track record, what you've done  
6 to copy and paste that. Absurd.

7           No evidence that he ever came up with a real  
8 investment idea, anything that he did was directed to him by  
9 Ruja. Send the money here. That's not an investment -- that's  
10 not an investment manager.

11           All of the lies, and Mr. Folly went through many of  
12 them. It wasn't don't offer, don't deny. That's nonsense.  
13 Don't buy that. Mr. Scott affirmatively lied again and again  
14 and again in answer to detailed and specific questions from  
15 banks. He made a concerted effort to hide where the money came  
16 from and whose it was. That was the point. It's not  
17 complicated. The money was dirty. And the defendant lied  
18 because he knew it.

19           Papering. And I won't go through all the examples.  
20 You saw a during this trial. But fake documents. Time after  
21 time. Falsifying documents. You don't do that in a legitimate  
22 investment fund. You don't need to.

23           And this idea of Paul Spendiff delaying or causing  
24 some issue by waiting and holding back on transfers. You know  
25 what. Paul Spendiff did exactly what we'd want someone in his

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Mr. DiMase - Rebuttal

1 position to do. He figured it out. And he put an end to it.  
2 That's what Paul Spendiff did.

3 Finally, the fees. I'm not going to dwell on this.  
4 But you all know it doesn't make any sense. One-eighth of the  
5 amount of the money that went into the funds, one-eighth, \$50  
6 million. For not earning a cent. Or barely earning a cent  
7 anyway. He wasn't getting paid for making money because he  
8 didn't make any.

9 It's preposterous. That those were real fees. He got  
10 paid for taking a big risk, laundering the money.

11 Let's talk for a minute about this concept that he  
12 stopped. Let's look at when the money started going back.  
13 Because in January and February of 2017 there was an inquiry by  
14 Bank of New York Mellon and -- involving DMS Bank and his  
15 accounts there. And then later there was an inquiry by Bank of  
16 Ireland. And now we see all of the money flowing on back.

17 Look at Government Exhibit 1307. Look at the top of  
18 this e-mail. In March of 2017. Does this look like someone  
19 who stopped? Things are not looking good. I'm asking the boss  
20 to hold still.

21 He's still doing it and he's putting it on pause  
22 because he's under investigation. And all of the money when it  
23 went back, it went back to people Ruja said it should go to and  
24 those were other money launderers. Amer Abdulaziz. Back to  
25 Gilbert Armenta. Back to people at Ruja's direction.

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Mr. DiMase - Rebuttal

1           Let's look while we're at it at the top of Exhibit  
2 1344. Mr. Devlin-Brown went through this e-mail but he didn't  
3 show the top e-mail. This is in June of 2018. Any issue you  
4 have in EU can be traced to BVI.

5           Mr. Scott knew that if there was a problem in Bulgaria  
6 and in Europe it was going to come and haunt him.

7           And while we're at it, why don't we show the top of  
8 Government Exhibit 1129. Another e-mail that counsel didn't  
9 show you. The very top of the thread.

10          Take the money in and keep the structure sterile and  
11 on course.

12          Money laundering, ladies and gentlemen.

13          So Mr. Devlin-Brown spoke briefly about reasonable  
14 doubt. And I just want to say reasonable doubt is -- there's  
15 nothing mystical or magical about it. It's the same standard  
16 that gets applied in courtrooms across this country every  
17 single day. It's been the same burden since this country was  
18 founded and everyday juries reach verdicts. The government  
19 embraces that burden here.

20          And you should know reasonable doubt isn't about one  
21 piece of evidence at a time. It's all of the evidence. Look  
22 at all of the evidence together and resist the defense's  
23 suggestion that you look one at a time: At the blockchain, at  
24 one e-mail. That's not what this is about.

25          Let me just address a few of the arguments that

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Mr. DiMase - Rebuttal

1 Mr. Devlin-Brown made specifically. One is about the  
2 credibility of some of the witnesses. He talked about people  
3 who weren't even witnesses at this trial. Armenta, Dilkinska,  
4 who he said have lied. Yeah, they've lied. They lied with  
5 Mr. Scott. They lied to him. These are the people that  
6 Mr. Scott was in bed with committing money laundering and he  
7 knew exactly who Mr. Armenta was, his client of ten years.

8 And more importantly, you don't really have to rely on  
9 their statements. Almost everything that they said, those two  
10 people, that came into evidence is reflected in e-mails or  
11 other evidence that corroborates exactly what they said.

12 Even the things that aren't exactly corroborated like  
13 Irina's statement after she got arrested or after Mark Scott  
14 got arrested that she was freaking out and wanted to destroy  
15 the documents. Use your common sense. Does that make sense?  
16 Of course it does. You saw Irina Dilkinska's name over all  
17 sorts of documents in this case and that reaction is completely  
18 understandable.

19 And with respect to Mr. Ignatov and his credibility.  
20 Look, if you he wanted to get Mark Scott he could have done a  
21 heck of a better job. Mr. Devlin-Brown himself said he didn't  
22 say what happened in the meeting. That's because he wasn't in  
23 the meeting. He could have put himself in the meeting. He  
24 could have said Mark Scott knew every single thing and that we  
25 talked about money laundering the whole time. That's not what

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Mr. DiMase - Rebuttal

1 he did. If that's what he was here to do, to lie to get Mark  
2 Scott in trouble, that testimony made no sense. The testimony  
3 did make sense because there was a time when Mr. Ignatov came  
4 into a position of power and at that point he needed to know  
5 what was going on. And it makes perfect sense that the other  
6 people at OneCoin would tell him at that stage.

7 The idea that Mr. Scott, turning to another defense  
8 argument, can rely on this law firm's diligence, you should  
9 throw that in the trash. It's a total distraction. First of  
10 all, it's not what this case is about. It's not about Locke  
11 Lord and whether they did something wrong. It's about Mark  
12 Scott who was flying to Sofia, on a cryptophone with Ruja,  
13 coordinating on a daily basis with leaders of the scheme. Mark  
14 Scott.

15 Locke Lord wasn't getting e-mails from people like  
16 Gary Gilford or ongoing police investigations. And Locke Lord  
17 is a firm trying to make money. They're not the government.  
18 They're not an investigative body.

19 And let's not forget Mr. Scott himself hid his  
20 involvement in the Fenero Funds from the firm and then he wants  
21 you to believe that because the firm continued to do business  
22 with them that that gives him comfort? That's ridiculous.

23 He himself was hiding things from Locke Lord and this  
24 case isn't about Locke Lord. It's about Mark Scott.

25 It's not about Robert Courtneidge either.

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Mr. DiMase - Rebuttal

1           And just as a quick aside on him, that was the same  
2 guy on the e-mail about 220,000 pounds of cash. And, look,  
3 whether or not they did anything with that money, if you get an  
4 e-mail like that you know something is very wrong. That is a  
5 huge red flag and that was way before a single dime of money  
6 went into the Fenero Funds.

7           And that opinion that you saw, the quote/unquote  
8 opinion that cryptocurrency paper, not one word in it about  
9 OneCoin.

10          And on the issue of anonymity. Again, this isn't  
11 about privacy. Ruja is a big person. But if Beyoncé wanted to  
12 open an account with a shell company she could, you know, to  
13 get privacy. But when the bank asks where the money comes  
14 from, they're going to know. They're going to find out. There  
15 is no need to lie. That's not a matter of privacy.

16          Ruja, on the other hand, couldn't walk into a bank and  
17 get an account and put money in it. That's why she needed Mark  
18 Scott. It wasn't about anonymity or privacy. It was about  
19 hiding the source of the money to put it through the banks, to  
20 clean it for Ruja. That's what it was about.

21          And if it was about anonymity, if it was about privacy  
22 why didn't Mark Scott say that to the FBI? Why didn't he say I  
23 did handle OneCoin money. It was Ruja's. She just wanted some  
24 privacy.

25          Now, I'm not going to focus on this tax issue. This

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Mr. DiMase - Rebuttal

1 is not a tax case. He's not charged with fraudulent tax  
2 filings. That is a distraction. But I would note to you that  
3 \$29 million of what he made was reported in October 2019, two  
4 weeks before this trial started, long after Mr. Scott knew that  
5 the government was involved. There's not much more to say  
6 about that.

7 Well let me say one more thing. Mr. Scott didn't want  
8 this all to fall apart because he didn't report things on his  
9 taxes. I mean he was buying cars and houses and everything  
10 else. He was living out in the open with this money. He --  
11 the IRS could show up any day and ask where the money came from  
12 and he'd be stuck. He set up a fund to make it look legitimate  
13 and he filed his taxes to make it look legitimate, to get away  
14 with it.

15 Let me spend a minute on the bank fraud charge and  
16 tell you about one other legal concept that I want you to keep  
17 in mind and then I'll wrap up.

18 So, on this bank fraud idea the judge is going to  
19 instruct you that a bank fraud conspiracy is an agreement to  
20 commit a scheme to defraud an FDIC insured bank, to get the  
21 money out of the bank.

22 No one has to lie to a bank directly as long as the  
23 lie that's told is intended to cause the bank to disburse  
24 funds. And there is no law that says it has to be the  
25 defendant's account or the defendant's company's account or

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Mr. DiMase - Rebuttal

1 anything like that. And the bank you're going to hear doesn't  
2 have to get hurt. It's about lying to cause the bank to  
3 disburse the money that they would not otherwise disburse.

4 And how does that fit here? Well, the defendant got  
5 everyone holding Ruja's money onboard with one big lie: Fenero  
6 is an investment fund and that the money coming in was  
7 investments and that the money going out was investments. That  
8 was the lie at the heart of this case.

9 And with that lie there were a lot of smaller lies.  
10 Partial payment for subscription. Loan for CryptoReal.  
11 Investment management. Asset management. Investment in XG.  
12 All of the little lies that had to be told by the banks  
13 consistent with that one big lie, to move the money around.

14 Now, you're going to hear from the judge that a  
15 conspiracy oftentimes much is left to the unexpressed  
16 understanding. So there doesn't need to be evidence that Mark  
17 Scott called up Gilbert Armenta and said: Hey, man, tell them  
18 asset management; tell them investment in XGII.

19 You can draw the reasonable inference from the facts  
20 that Mr. Armenta knew that's what he had to do. And you know  
21 why? Because everybody knows Mark Scott, Gilbert Armenta, you  
22 can't say: Hey, this is OneCoin money, to send it over to  
23 these Fenero Funds. The only way it worked was lying to the  
24 banks. Mr. Scott knew that full well. That's what his whole  
25 scheme was about.

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Mr. DiMase - Rebuttal

1           And on top of that there's a subscription agreement,  
2 investment agreement that Mr. Scott and Mr. Armenta both signed  
3 that papers the whole transaction as an investment. And, of  
4 course, Mr. Armenta would lie to banks in a manner consistent  
5 with that agreement, the agreement that Mr. Scott put together  
6 for the funds. That's it.

7           And on the Bank of New York Mellon lies, those came  
8 directly from Mark Scott. You may remember the loan for  
9 CryptoReal wire instruction that he sent to Apex. And he put  
10 that right in there. And that's the same lie that's in the  
11 payment message that goes through Bank of New York Mellon that  
12 gets it through. \$30 million. That was Mark Scott's lie.  
13 That wasn't a loan. You all know that's not a loan from the  
14 evidence you saw in this case. And that was a lie. And it  
15 came directly from Mark Scott and he knew the money would flow  
16 through that correspondent account because the wire  
17 instructions that he e-mailed to himself said U.S. dollar  
18 transactions go through Bank of New York Mellon in New York,  
19 New York.

20           The OneCoin victim wires and the use of the Locke Lord  
21 escrow accounts also at U.S. FDIC insured banks fit the same  
22 pattern. And just because Mr. Scott doesn't know what somebody  
23 is telling a U.S. victim to say to the bank doesn't mean  
24 they're not part of the exact same conspiracy with the exact  
25 same goal. You don't have to know who everyone else is or what

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Mr. DiMase - Rebuttal

1 everyone else is doing in a conspiracy as long as you all share  
2 in the same illegal object: To lie to the U.S. banks to move  
3 the money around. That's what happened.

4               OK. So let me talk to you about this one other legal  
5 concept to keep in the back of your mind and then I'll  
6 conclude.

7               The judge is also going to instruct you about the  
8 theory of conscious avoidance. Now the government has  
9 presented to you evidence to show that the defendant knew that  
10 OneCoin was a fraud and that he was laundering Ruja's dirty  
11 money. But even he didn't know for certain, he's still guilty  
12 if he was aware there was a high probability that OneCoin was a  
13 fraud and took deliberate and conscience steps to avoid  
14 confirming that fact.

15               And there were warning signs all over the place. This  
16 is the idea of conscious avoidance that I expect Judge Ramos  
17 will talk to you about.

18               He's a trained lawyer. And OneCoin screams fraud.  
19 Doubling your coins and your value overnight. The CPA article.  
20 The article about Gary Gilford and the ongoing police  
21 investigation. The fact that OneCoin bank accounts are being  
22 closed left and right. Scott knew but at a minimum he  
23 deliberately closed his eyes to what was obvious. So if he  
24 ever got caught and this trial ever happened he could say that  
25 he was duped. He wasn't.

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Mr. DiMase - Rebuttal

1                   Ladies and gentlemen, Mark Scott is not a lion. Mark  
2 Scott is a liar, a liar who thought he could get away with it.  
3 He was well educated. He was professional. He had the  
4 knowhow.

5                   Can you put up 4101, please. Thank you.

6                   4104.

7                   His smoke and mirrors were better than most. They  
8 were designed to withstand scrutiny, to look real. That was  
9 the whole point. But the e-mails he thought you would never  
10 see, the phonecall he thought you would never hear, the bank  
11 accounts he thought would never be traced, they are all before  
12 you now along with all of the other evidence in this case. And  
13 as hard as he tried, the defendant has been unmasked for who he  
14 really is, not an investment manager but a money launderer, a  
15 money launderer who earned over \$50 million on the backs of  
16 people like Linda Cohen and William Horn, and people like them  
17 all over the world who saw their money disappear into thin air.  
18 He's not a scapegoat. He's a trained professional who took  
19 advantage of his skills to earn millions of dollars of criminal  
20 proceeds. And when he got a chance to explain himself to the  
21 FBI and the IRS he did what he always did, what is consistent  
22 with his worldview. He lied.

23                   As Scott himself told Ruja, the time for smoke and  
24 mirrors is over. It is now time for you, the jury, to hold the  
25 defendant accountable for his crimes. Mark Scott, the

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1 defendant, is guilty.

2 THE COURT: Thank you, Mr. DiMase. Ladies and  
3 gentlemen, we're going to take a brief five-minute break to get  
4 ready for the charge. Thank you for your indulgence in  
5 agreeing to say a little longer.

6 (Jury not present)

7 MR. FOLLY: Your Honor it sounded like from what you  
8 said there at the end that the jury has agreed to stay later.  
9 Is that what's going on?

10 THE COURT: Yes. We're going to do the charge now.

11 MR. DEVLIN-BROWN: Your Honor, just one issue I wanted  
12 to raise briefly. I didn't want to object unnecessarily during  
13 the rebuttal. But Mr. DiMase twice said words to the effect  
14 of: And if Mr. Scott had anything to say about anonymity or  
15 privacy he would have spoken to the FBI. I think he chose his  
16 words carefully because he didn't ever use the words anonymity  
17 or privacy to the FBI. But I think he said things that we  
18 would certainly argue support that. All I'm asking for, your  
19 Honor, is an instruction from the court that the government has  
20 the right to select the portions to play and you shouldn't  
21 infer anything one way or the other about what Mr. Scott may  
22 have said in any other statement.

23 THE COURT: Isn't the entire thing in?

24 MR. DEVLIN-BROWN: His postarrest? Oh, no. A  
25 fraction of it.

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Charge

1           THE COURT: Do counsel have a -- copies of the package  
2 that we're giving the jury?

3           MR. FOLLY: Your Honor, one question. After the Court  
4 charges the jury is the jury going to stay and begin  
5 deliberating?

6           THE COURT: I doubt it. I mean they agreed to stay  
7 until three o'clock. I'm likely going to go a little bit  
8 beyond three o'clock. I'll tell them beginning tomorrow they  
9 can stay as long as they like.

10          MR. DiMASE: Your Honor, is this issue resolved?

11          THE COURT: I'm not going to give an additional  
12 instruction.

13                     (Jury present)

14          THE COURT: Everyone please be seated but be careful  
15 when you're seated because there's a binder on your chair.

16           So, ladies and gentlemen, I am about to read you the  
17 charge. It is traditional that the charge is read to the jury.  
18 There are some very important concepts in here and the words  
19 that are used in the law are very important so it simply will  
20 not do for judges to ad-lib the law. What you have in the  
21 binder are three documents. You have exactly what I'm going to  
22 read to you now. So you have the charge. You can read along  
23 with me or if you just want to listen you're free to do that.  
24 Whatever makes you most comfortable. And you will be allowed  
25 to take this with you as you deliberate, so you have the charge

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1 as you deliberate.

2                 Also in the binder is the indictment. As I will  
3 instruct you, the indictment is not evidence at all. It is  
4 simply the accusation that was brought against Mr. Scott.

5                 And you also have a verdict form which at the end of  
6 deliberations your foreperson will sign and read it out here in  
7 court. And you only have to sign only one verdict form but you  
8 each have a copy of it.

9                 Now I have what I believe to be a mellifluous voice  
10 but that is not an opinion widely shared. My wife describes it  
11 as an annoying drone.

12                 I think at some point during this reading, it will  
13 take me about an hour-and-a-half or so or less, if you feel the  
14 need to stand up and stretch by your seat I will not take  
15 offense. OK. So now let me begin the reading.

16                 JUROR: Your Honor, can we write on this?

17                 THE COURT: Oh, yes. That's yours.

18                 Members of the Jury, we have almost reached that point  
19 where you are about to begin your final function as jurors  
20 which, as you all appreciate, is one of the most important  
21 duties of citizenship in this country.

22                 My instructions to you will be in four parts. First,  
23 I will give some introductory instructions about the role of  
24 the court and of the jury, and about the presumption of  
25 innocence and the government's burden of proof. Second, I will

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1 describe the charges and the law governing those chargings,  
2 which you will apply to the facts as you find them to be  
3 established by the proof. Third, I will give you instructions  
4 concerning the evaluation of evidence, and the fourth and final  
5 section of these instructions will relate to your  
6 deliberations.

7 I will first describe the role of the court and of the  
8 jury.

9 It is my duty to instruct you as to the law, and it is  
10 your duty to accept these instructions of law and apply them to  
11 the facts as you determine them. If an attorney stated a legal  
12 principle different from any that I state to you in my  
13 instructions, it is my instructions you must follow. You  
14 should not single out any instruction as alone stating the law,  
15 but you should consider my instructions as a whole when you  
16 retire to deliberate. You should not be concerned about the  
17 wisdom of any rule that I state. Regardless of any opinion you  
18 may have about what the law may be or ought to be, it would be  
19 a violation of your oath to base your verdict on any view of  
20 the law other than that which I give you.

21 You, the Members of the Jury, are the sole and  
22 exclusive judges of facts. You pass on the evidence, determine  
23 the credibility of witnesses, resolve such conflicts as there  
24 may be in the testimony, draw whatever reasonable inferences  
25 you decide to draw from the facts as you determine them, and

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1 determine the weight of the evidence. In doing so, remember  
2 that you took an oath to render judgment impartially and  
3 fairly, without prejudice or sympathy or fear, based solely on  
4 the evidence and the applicable law.

5 The fact that the prosecution is brought in the name  
6 of the United States of America entitles the government to no  
7 greater consideration than that given to any other party to  
8 this litigation. By the same token, the government is entitled  
9 to no less consideration.

10 The defendant, Mark S. Scott, has pleaded not guilty  
11 and has denied every charge against him. That means the  
12 government has the burden to prove him guilty beyond a  
13 reasonable doubt. That burden of proof never shifts to  
14 Mr. Scott. A defendant in a criminal case never has the burden  
15 to call any witnesses or produce any evidence. Even though  
16 Mr. Scott has presented evidence in his defense, it is not his  
17 burden to prove himself not guilty. It is always the  
18 government's burden to prove each of the elements of the crimes  
19 charged beyond a reasonable doubt.

20 In other words, Mr. Scott starts with a clean slate.  
21 He is presumed innocent of all charges against him, and he must  
22 be presumed to be innocent by you throughout your  
23 deliberations, until such time, if ever, that you, as a jury,  
24 unanimously find that the government has proven him guilty  
25 beyond a reasonable doubt. The presumption of innocence alone

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1 requires you to acquit Mr. Scott if the government fails to  
2 prove him guilty beyond a reasonable doubt.

3 Since, in order to convict the defendant of a given  
4 charge, the government is required to prove that charge beyond  
5 a reasonable doubt, the question then is: What is a reasonable  
6 doubt? The words almost define themselves. It is a doubt  
7 based upon reason. It is doubt that a reasonable person has  
8 after carefully weighing all of the evidence. It is a doubt  
9 that would cause a reasonable person to hesitate to act in a  
10 matter of importance in his or her personal life. Proof beyond  
11 a reasonable doubt must, therefore, be proof of a convincing  
12 character that a reasonable person would not hesitate to rely  
13 upon in making an important decision.

14 A reasonable doubt is not caprice or whim. It is not  
15 speculation or suspicion. It is not an excuse to avoid the  
16 performance of an unpleasant duty. The law does not require  
17 that the government prove guilt beyond all possible doubt:  
18 Proof beyond a reasonable doubt is sufficient to convict.

19 If, after fair and impartial consideration of the  
20 evidence, you have a reasonable doubt as to the defendant's  
21 guilty with respect to a particular charge against him, you  
22 must find the defendant not guilty of that charge. On the  
23 other hand, if after fair and impartial consideration of all of  
24 the evidence, you are satisfied beyond a reasonable doubt of  
25 the defendant's guilt with respect to a particular charge

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1 against him, you should find the defendant guilty of that  
2 charge.

3 The defendant in this matter, Mr. Scott, has been  
4 formally charged in what is called an indictment. An  
5 indictment is not evidence. It is simply an accusation. It is  
6 no more than the means by which a criminal case is started. It  
7 is not proof of a defendant's guilt. You are to give no weight  
8 to the fact that an indictment has been returned against the  
9 defendant.

10 Before you begin your deliberations, you will be  
11 provided with a copy of the indictment. I will summarize the  
12 offenses charged in the indictment and then explain in detail  
13 the elements of each offense. Each charge is called a count.

14 The indictment contains two counts. Each count must  
15 be considered separately.

16 Count One alleges that from at least in or about  
17 September 2015, up to and including in or about 2018 the  
18 defendant conspired or agreed with others to commit money  
19 laundering; that is, to engage in financial transactions in  
20 order to conceal and disguise the nature, location, source,  
21 ownership, and control of the proceeds of a fraud scheme  
22 involving a purported cryptocurrency known as OneCoin.

23 (Continued on next page)

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1                   THE COURT: (Continuing) Count two alleges that from  
2 at least in or about September 2015, up to and including in or  
3 about 2018, the defendant conspired or agreed with others to  
4 commit bank fraud, by misrepresenting and omitting material  
5 facts to banks and other financial institutions worldwide to  
6 cause those financial institutions, including Federal Deposit  
7 Insurance Corporation insured financial institutions in the  
8 United States, to transfer funds into and out of accounts  
9 associated with purported investment funds operated by the  
10 defendant and others.

11                  You must consider each count separately, and you must  
12 return a verdict of guilty or not guilty for each count.  
13 Whether you find the defendant guilty or not guilty as to one  
14 offense should not affect your verdict as to the other offense  
15 charged. Mr. Scott has pleaded not guilty to these charges.

16                  As I just mentioned, the two counts of the indictment  
17 charge the defendant with the crime of conspiracy. A  
18 conspiracy is a kind of criminal partnership -- a combination  
19 or agreement of two or more persons to join together to  
20 accomplish some unlawful purpose.

21                  The crime of conspiracy is to violate a federal law is  
22 an independent offense. It is separate and distinct from the  
23 actual violation of any specific federal laws, which the law  
24 refers to as "substantive crimes."

25                  For example, Count One of the indictment alleges what

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## CHARGE

1       is called a multi-object conspiracy, which charges that the  
2       objectives of the conspiracy were to commit two different types  
3       of money laundering. A conspiracy to commit money laundering  
4       is an entirely distinct and separate offense from the actual  
5       commission of money laundering. If a conspiracy exists, even  
6       if it should fail in its purpose, it is still punishable as a  
7       crime.

8             Indeed, you may find a defendant guilty of the crime  
9       of conspiracy to commit money laundering even if the  
10      substantive crimes which were the object of the conspiracy were  
11      not actually committed.

12          Congress has deemed it appropriate to make conspiracy,  
13       standing alone, a separate crime even if the conspiracy is not  
14       successful. This is because collective criminal activity poses  
15       a greater threat to the public safety and welfare than  
16       individual conduct, and increases the likelihood of success of  
17       a particular criminal venture.

18          You will note that the indictment alleges that certain  
19       acts occurred on or about various dates. It is not necessary,  
20       however, for the government to prove that the alleged crimes  
21       were committed on exactly those dates. The law requires only  
22       that the government prove beyond a reasonable doubt a  
23       substantial similarity between the dates and months alleged in  
24       the indictment and the dates and months established by the  
25       evidence.

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1           It is also not essential that the government prove  
2 that the charged crimes started and ended at those times  
3 specified in the indictment. It is sufficient if you find that  
4 the conspiracies and substantive crimes charged existed for  
5 some time, for some of the time within the period set forth in  
6 the indictment.

7           Count One: Conspiracy to commit money laundering.  
8 Elements of a conspiracy.

9           Let us now turn to the charges against Mr. Scott. As  
10 I noted earlier, Count One charges Mr. Scott with conspiracy to  
11 commit money laundering in violation of 18 U.S.C. -- that's  
12 United States Code -- Section 1956(h). To meet its burden of  
13 proof as to Count One, the government must establish beyond a  
14 reasonable doubt each of the following elements:

15           First, that the conspiracy charged in Count One of the  
16 indictment existed; that is, that there was an agreement or  
17 understanding between two or more people to commit a federal  
18 crime, which in this case is money laundering; and second, that  
19 the defendant knowingly and willfully became a member of the  
20 alleged conspiracy, with the intent to further its illegal  
21 purposes -- that is, with the intent to commit the object of  
22 the charged conspiracy.

23           If you find from your consideration of the evidence  
24 that each of these elements has been proved beyond a reasonable  
25 doubt, then you should find the defendant guilty. If, on the

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1 other hand, you find from your consideration of the evidence  
2 that any of these elements has not been proved beyond a  
3 reasonable doubt, then you should find the defendant not  
4 guilty.

5 Now let us separately consider the two elements:  
6 First, the existence of the conspiracy, and second whether the  
7 defendant knowingly and willfully associated himself with and  
8 participated in the conspiracy.

9 Some of the words and phrases you just heard have  
10 special meanings under the law. I will now go through each of  
11 these elements in more detail to help explain what each element  
12 means, including the words with specialized meaning. When you  
13 are applying the elements I just listed, you must use the  
14 definitions of the words I instruct you to use.

15 The first element which the government must prove  
16 beyond a reasonable doubt to establish the offense of  
17 conspiracy is that the conspiracy actually existed, that is,  
18 that two or more persons knowingly and willfully entered into  
19 the unlawful agreement charged in the indictment. The essence  
20 of the crime of conspiracy is the unlawful combination or  
21 agreement to violate the law. As I mentioned earlier, the  
22 ultimate success of the conspiracy, or the actual commission of  
23 the crime that is the object of the conspiracy, is not relevant  
24 to the question of whether the conspiracy existed.

25 In order for the government to satisfy this element,

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1 you need not find that the alleged members of the conspiracy  
2 sat around together and entered into any express or formal  
3 agreement. Similarly, you need not find that the alleged  
4 conspirators stated in words or writing what the scheme was,  
5 its object or purpose, or every precise detail of the scheme or  
6 the means by which its object or purpose was to be  
7 accomplished. What the government must prove is that there was  
8 a mutual understanding, either spoken or unspoken, between two  
9 or more people to cooperate with each other to accomplish an  
10 unlawful act.

11 You may, of course, find that the existence of an  
12 agreement to commit an unlawful act has been established by  
13 direct proof. However, common sense tells you that when  
14 people, in fact, enter into a criminal conspiracy, much is left  
15 to the unexpressed understanding. Conspiracy by its very  
16 nature is characterized by secrecy. It is therefore rare that  
17 a conspiracy can be proven by direct evidence of an explicit  
18 agreement.

19 You may, however, infer the existence of the  
20 conspiracy from the circumstances of the case and the conduct  
21 of the parties involved, if you find that the evidence  
22 justifies such an inference. In a very real sense, then, in  
23 the context of a conspiracy charge, actions often speak louder  
24 than words. In this regard, you may, in determining whether an  
25 agreement existed here, consider the actions and statements of

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1 all those whom you found or find to be participants as proof  
2 that a common design existed on the part of the persons  
3 involved in the conspiracy to act together to accomplish an  
4 unlawful purpose.

5 So first, you must determine whether or not the proof  
6 established beyond a reasonable doubt the existence of the  
7 conspiracy charged. In considering the first element, you  
8 should consider all of the evidence that has been admitted with  
9 respect to the conduct and statements of each alleged  
10 co-conspirator, which may include not only the defendant, but  
11 other co-conspirators as well, and such inferences as  
12 reasonably may be drawn from the evidence.

13 The object of a conspiracy is the illegal goal the  
14 co-conspirators agree or hope to achieve. Count One of the  
15 indictment charges that there were two objectives of the  
16 conspiracy, both of which involved concealment money  
17 laundering. I will explain both of these in more detail in a  
18 moment. You need not find that the defendant agreed to  
19 accomplish both types of money laundering. An agreement to  
20 accomplish either one either of the objects is sufficient. In  
21 other words, if you find that the defendant agreed to commit  
22 either form of concealment money laundering, the illegal  
23 purpose element of a conspiracy will be satisfied. You must,  
24 however, be unanimous that the government has proven beyond a  
25 reasonable doubt at least one of these two alleged objectives

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of the conspiracy. You must also be unanimous as to which of the two types has been proven. With that in mind, I will now proceed to discuss the elements of each form of the concealment money laundering.

The first type of concealment money laundering occurs when a defendant conducts a financial transaction knowing that the transaction was designed, in whole or in part, to conceal or disguise the proceeds of a specified unlawful activity. Here, the specified unlawful activity is wire fraud. In order to prove concealment money laundering, the government must establish the following four elements beyond a reasonable doubt:

First, that the defendant conducted (or attempted to conduct) a financial transaction which must in some way or degree have affected interstate or foreign commerce;

Second, that financial transaction at issue involved the proceeds of specified unlawful activity, which here is alleged to be a wire fraud scheme;

Third, that the defendant knew that the financial transaction involved the proceeds of some form of unlawful activity; and

Fourth, that the defendant knew that the transaction was designed, in whole or in part, either to conceal or disguise the nature, location, source, ownership or control of the proceeds of the unlawful activity.

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1           The first element of concealment money laundering is  
2 that the defendant conducted a financial transaction. The term  
3 "conducts" includes the action of initiating, concluding or  
4 participating in initiating or concluding a transaction.

5           The term "financial transaction" means a transaction  
6 which in any way or degree affects interstate or foreign  
7 commerce and involves the movement of funds by wire or other  
8 means, or involves one or more money instruments, (2) a  
9 transaction involving a financial institution which is engaged  
10 in, or the activities of which affect, interstate or foreign  
11 commerce in any way or degree. For purposes of the second type  
12 of financial transaction I have just described, I instruct you  
13 that an FDIC insured bank constitutes a financial institution.

14           A "transaction involving a financial institution"  
15 includes a deposit, withdrawal, transfer between accounts,  
16 exchange of currency, loan, extension of credit, purchase or  
17 sale of any stock, bond, certificate of deposit, or other  
18 monetary instrument, use of a safe deposit box or any other  
19 payment, transfer, or delivery by, through or to a financial  
20 institution by whatever means. The term "funds" includes any  
21 currency, money or other medium of exchange that can be used to  
22 pay for goods and services.

23           Interstate commerce includes any transmission,  
24 transfer or transportation of goods or services, both tangible  
25 and intangible, communications and/or persons between persons,

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1 places or entities located in one state (including the District  
2 of Columbia) and persons, places or entities located in another  
3 state, regardless of whether done for a business purpose or  
4 otherwise.

5 Foreign commerce means the same thing, except it is  
6 between a person, place or entity in the United States and a  
7 person place or entity in a foreign country.

8 In determining whether someone is engaged in or  
9 whether his activities affect interstate or foreign commerce,  
10 the involvement in interstate or foreign commerce can be  
11 minimal. Any involvement at all will satisfy this element.

12 You do not have to decide whether the effect on  
13 interstate or foreign commerce was harmful or beneficial to a  
14 particular business or to commerce in general. The government  
15 satisfies its burden of proving an effect on interstate or  
16 foreign commerce if it proves beyond a reasonable doubt any  
17 effect, whether it was harmful or not.

18 In addition, it is not necessary for the government to  
19 show that the defendant actually intended or anticipated an  
20 effect on interstate or foreign commerce by his actions or that  
21 commerce was actually affected. All that is necessary is that  
22 the natural and probable consequences of the acts the defendant  
23 agreed to take would affect interstate or foreign commerce.

24 The second element of concealment money laundering  
25 which the government must prove beyond a reasonable doubt is

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1 that the financial transactions must involve the proceeds of  
2 specified unlawful activity. Here, the specified unlawful  
3 activity is wire fraud, in violation of 18 U.S.C. Section 1343.

4 I instruct you, as a matter of law, that the term  
5 "specified unlawful activity" includes wire fraud. I'll give  
6 you the elements of wire fraud in just a moment.

7 The term "proceeds" means any property, or any  
8 interest in property that someone acquires or retains as  
9 profits resulting from the commission of the specified unlawful  
10 activity.

11 The elements of the substantive crime of wire fraud,  
12 which is the specified unlawful activity, are:

13 First, that there was a scheme or artifice to defraud  
14 others of money or property by materially false or fraudulent  
15 pretenses, representations or promises;

16 Second, that one or more participants in that scheme  
17 knowingly and willfully devised or participated in the scheme  
18 or artifice to defraud, with knowledge of its fraudulent nature  
19 and with specific intent to defraud; and

20 Third, that in the execution of that scheme, one or  
21 more participants in that scheme used or caused the use by  
22 others of interstate or foreign wires.

23 As to the first element, a "scheme or artifice" is  
24 simply a plan for accomplishment of an object. "Fraud" is a  
25 general term. It includes all the possible means by which a

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1 person seeks to gain some unfair advantage over another person  
2 by false representations, false suggestion, false pretenses or  
3 concealment of the truth. Thus, a scheme to defraud is merely  
4 a plan to deprive another of money or property by trick,  
5 deceit, deception or swindle.

6 As to the second element, the government must  
7 establish beyond a reasonable doubt that one or more  
8 participants in the fraud scheme devised or participated in the  
9 fraudulent scheme knowingly and with the specific intent to  
10 defraud. To "devise" a scheme to defraud is to concoct or plan  
11 it. To "participate" in a scheme to defraud means to associate  
12 oneself with it with a view and intent toward making it  
13 succeed. To act knowingly means to act voluntarily and  
14 deliberately, rather than mistakenly or inadvertently.

15 The third and final element the government must prove  
16 beyond a reasonable doubt is that in the execution of that  
17 scheme, one or more participants in that scheme used or caused  
18 use by others of interstate or foreign wires (for example, wire  
19 transfers, phone calls, e-mail communications, or text  
20 messages). An interstate wire is a wire that passes between  
21 two or more states. A foreign wire is a wire that passes  
22 between the United States and someplace outside the United  
23 States.

24 The use of the wire need not itself be a fraudulent  
25 representation. It must, however, further or assist in some

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way in carrying out the scheme to defraud. It is not necessary that any of the participants in the wire fraud scheme be directly or personally involved in any wire communication, as long as the communication is reasonably foreseeable in the execution of the alleged scheme to defraud in which the participants participated in.

Only the wire communication must be reasonably foreseeable, not its interstate or foreign component. Thus, if you find that the wire communication was reasonably foreseeable, and the interstate or foreign wire communications actually took place, then this element is satisfied, even if it was not foreseeable that the wire communication would cross state or national lines.

The third element of concealment money laundering which the government must prove beyond a reasonable doubt is that the defendant knew that the financial transactions at issue involved the proceeds of some form, though not necessarily which form, of unlawful activity.

Keep in mind that it is not necessary for the defendant to believe that the proceeds came from the wire fraud scheme; it is sufficient that the defendant believed that the proceeds came from some unlawful activity that constitutes a felony under state, federal, or foreign law. I instruct you that wire fraud is a felony under the federal law.

The fourth and final element of concealment money

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## CHARGE

1 laundering concerns the purpose of the transaction.

2 Specifically, the government must prove beyond a reasonable  
3 doubt that the defendant conducted financial transactions with  
4 knowledge that the transactions were designed, in whole or in  
5 part, to conceal or disguise the nature, location, source,  
6 ownership or control of the proceeds of the specified unlawful  
7 activity.

8 As I have previously instructed, to act knowingly  
9 means to act purposely and deliberately and not because of  
10 mistake or accident, mere negligence, or other innocent reason.  
11 That is, the acts must be the product of the defendant's  
12 conscious objective. If you find that the evidence establishes  
13 beyond a reasonable doubt that the defendant knew the purpose  
14 of the particular transaction in issue, and that the  
15 transaction was either designed to conceal or disguise the true  
16 origin of the property in question, then this element is  
17 satisfied.

18 However, if you find that the defendant knew of the  
19 transaction, but did not know that it was either designed to  
20 conceal or disguise the true origin of the property in  
21 question, but instead thought that the transaction was intended  
22 to further an innocent transaction, you must find that this  
23 element has not been satisfied and find the defendant not  
24 guilty.

25 For the fourth element to be satisfied, the defendant

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1 need not know which specified unlawful activity he was agreeing  
2 to help conceal. He need only know that a purpose of the  
3 financial transaction was concealing the nature, location,  
4 source, ownership or control of the funds.

5 I will now discuss the second object of the conspiracy  
6 charged in Count One of the indictment, which involves another  
7 form of concealment money laundering.

8 In order to prove the crime of international  
9 concealment money laundering, the government must establish  
10 beyond a reasonable doubt each of the following three elements:

11 First, that the defendant knowingly transported,  
12 transmitted or transferred a monetary instrument or funds from  
13 a place in the United States to or through a place outside the  
14 United States, or to a place in the United States from or  
15 through a place outside the United States;

16 Second, that the defendant did so with knowledge that  
17 the monetary instrument or funds involved represent the  
18 proceeds of some form of unlawful activity; and

19 Third, that the defendant knew that the  
20 transportation, transmission, or transfer was designed, in  
21 whole or in part, to conceal, disguise the nature of the  
22 action, location, the source, the ownership, or control of the  
23 proceeds of specified unlawful activity.

24 The first element that the government must prove  
25 beyond a reasonable doubt is that the defendant transported,

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## CHARGE

transmitted or transferred or attempted to transport, transmit or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States (or to a place in the United States from or through a place outside the United States).

The term "monetary instrument" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

The term "funds" refers to money or negotiable paper that can be converted into currency.

"Transport," "transmit" and "transfer" are not words that require a definition. You should give them their ordinary, everyday meaning. The government need not prove that the defendant physically carried funds or monetary instruments in order to prove that he is responsible for transferring or transporting or transmitting. All that is required is proof that the defendant caused the funds or monetary instruments to be transported or transferred or transmitted by another person or entity.

The second and third elements of the crime constituting the second object of the money laundering

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1 conspiracy charged in Count One refer to concepts previously  
2 defined with respect to the first object of Count One, namely  
3 the term "some form of unlawful activity," and the concept of  
4 concealment of or disguising the location, source, ownership or  
5 control of the proceeds of specified unlawful activity. The  
6 same definitions and instructions provided previously apply to  
7 these terms as they appear in connection with the second object  
8 of Count One.

9 As I told you before, the government must prove beyond  
10 a reasonable doubt that the defendant knew that the financial  
11 transactions at issue involved the proceeds of some form of  
12 unlawful activity, but not necessarily which form of unlawful  
13 activity.

14 With respect to concealment, as that concept relates  
15 to this second object of the conspiracy charged in Count One,  
16 the government must prove beyond a reasonable doubt that the  
17 defendant transported, transmitted, or transferred the property  
18 involved in the transaction with knowledge that the  
19 transportation, transfer, or transmission was designed to  
20 conceal or disguise the nature, location, source, ownership, or  
21 control of the proceeds of the wire fraud scheme. I've already  
22 provided you with the definition of wire fraud, and you should  
23 apply that same definition here. As I instructed you before,  
24 as a matter of law, the term "specified unlawful activity"  
25 includes wire fraud. Proof only that the funds were concealed

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1 is not sufficient to satisfy this element. Instead, the  
2 government must prove that the purpose of the transportation,  
3 transfer, or transmission was to conceal or disguise the  
4 nature, location, source, ownership or control of the proceeds,  
5 and that the defendant knew that this was the purpose of the  
6 transportation, transfer or transmission.

7 Count Two charges the defendant with conspiring to  
8 commit bank fraud in violation of 18, United States Code,  
9 Section 1349.

10 I have already instructed you as to the elements of  
11 the conspiracy, and you should follow those instructions here.

12 In order to find the defendant guilty of this count,  
13 you must find that the government has proven the following  
14 elements beyond a reasonable doubt:

15 First, that the charged conspiracy existed; and

16 Second, that the defendant intentionally joined and  
17 participated in this conspiracy during the applicable time  
18 period.

19 In determining whether a conspiracy to commit bank  
20 fraud existed, you must consider the principles regarding the  
21 the existence of the conspiracy I set out earlier in these  
22 instructions. In this instance, the unlawful object or purpose  
23 of the conspiracy charged in Count Two is to commit bank fraud.

24 It is the conspiratorial agreement to do the crime  
25 that is at issue; it is a distinct and separate offense from

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1 the substantive crime of bank fraud. And, it follows, it is  
2 unnecessary for you to find that the crime of bank fraud  
3 actually occurred, although bank fraud, as I will define it,  
4 must be the object of the conspiracy, whether or not it  
5 succeeded.

6 It is sufficient to establish the existence of the  
7 conspiracy, as I've already said, if, from the proof of all the  
8 relevant facts and circumstances, you find beyond a reasonable  
9 doubt that the minds of at least two alleged co-conspirators  
10 met in an understanding to accomplish by the means alleged the  
11 object of the conspiracy.

12 The object of the conspiracy is charged in Count Two  
13 is bank fraud. The elements of bank fraud are as follows:

14 First, that there was a scheme to defraud a bank or a  
15 scheme to obtain money owned by or under the custody or control  
16 of a bank, by means of materially false or fraudulent  
17 pretenses, representations or promises;

18 Second, that the defendant executed or attempted to  
19 execute the scheme with the intent either to defraud the bank  
20 or to obtain money or funds owned by or under the custody or  
21 control of the bank; and

22 Third, that the bank involved was federally insured.

23 You will note that there is no requirement that  
24 interstate or international wire communications were used in  
25 connection with a bank fraud.

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1           The first element of bank fraud is that there was a  
2 scheme to defraud a bank or a scheme to obtain money owned by  
3 or under custody or control of a bank, by means of materially  
4 false or fraudulent pretenses, representations or promises.  
5 This element requires proof of the existence of only one of  
6 these. That is, either that there existed a scheme to defraud  
7 a bank or a scheme to obtain property under the custody or  
8 control of a bank by means of materially fraudulent pretenses,  
9 representations or promises.

10          In order to prove the first theory of bank fraud, that  
11 there was a scheme to defraud a bank, the government must prove  
12 beyond a reasonable doubt that there was a pattern or course of  
13 conduct concerning a material matter designed to deceive a  
14 federally insured bank into releasing property.

15          In order to prove the second theory of bank fraud, the  
16 government must prove beyond a reasonable doubt that there was  
17 a scheme to obtain money or property owned by or under the  
18 custody and control of a bank by means of false or fraudulent  
19 pretenses, representations or promises. A representation is  
20 fraudulent if it was falsely made with the intent to deceive.  
21 Deceitful statements of half-truths, intentional concealment of  
22 material facts, and the expression of an opinion not honestly  
23 entertained may constitute false or fraudulent representations  
24 under the statute.

25          The deception need not be premised upon spoken or

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written words alone. The arrangement of the words, the intentional omission of words, or the circumstances in which they are used may convey a false and deceptive appearance. If there is intentional deception, the manner in which it is accomplished does not matter.

A fraudulent representation must relate to a material fact or matter. A material fact is one that would reasonably be expected to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision. This means that if you find a particular statement of fact to have been false, you must determine whether that statement was one that a reasonable person might have considered important in making his or her decision. The same principle applies to fraudulent half-truths or intentional omissions of material facts.

In considering this element of bank fraud, it is unimportant whether a bank actually relied on a misrepresentation. It is sufficient if the misrepresentation is one that is merely capable of influencing the bank's decision.

It is not necessary for the government to prove that the financial institutions actually lost money or property as a result of the scheme, or that the defendant intended for the financial institutions to lose money or property. A scheme to defraud a bank also exists when a bank is provided false or

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1       fraudulent information that, if believed, would prevent the  
2       bank from being able to make informed economic decisions about  
3       what to do with its money or property. For example, if the  
4       government proves beyond a reasonable doubt that because of the  
5       scheme, the financial institutions entered into transactions  
6       that they would otherwise not have entered into, then the  
7       government will have met its burden of proof as to this  
8       element.

9                  The second element of bank fraud is that the defendant  
10      executed, attempted to execute, or participated in the scheme  
11      or artifice knowingly, willfully, and with the intent to  
12      defraud a bank or that the defendant executed or attempted to  
13      execute the scheme knowingly and willfully and with the intent  
14      to obtain money or funds owned or under the custody or control  
15      of the bank.

16                  A person acts "knowingly" if he acts voluntarily and  
17      deliberately and not mistakenly or inadvertently. A person  
18      acts "willfully" and "intentionally" if he acts purposely and  
19      voluntarily and with the specific intent to disobey or  
20      disregard the law.

21                  This element requires that the defendant engaged in or  
22      participated in the scheme alleged with an understanding of its  
23      fraudulent or deceptive character and with an intention to help  
24      it succeed. It is not required that defendant participate in  
25      or have knowledge of all of the operations of the scheme. The

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1       guilt of the defendant is not governed by the extent of his  
2 participation. It is also not necessary that the defendant  
3 originated the scheme to defraud or that the defendant  
4 participated in the alleged scheme from the beginning. A  
5 person who comes in at a later point with knowledge of the  
6 scheme's general operation, although not necessarily all of its  
7 details, and intentionally acts in a way to further the  
8 unlawful goals, becomes a member of the scheme and is legally  
9 responsible for all that may have been done in past in  
10 furtherance of the criminal objective and all that is done  
11 thereafter.

12           Even if the defendant participated in the scheme to a  
13 lesser degree than others, he is nevertheless guilty as long as  
14 the defendant became a member of the scheme to defraud with  
15 knowledge of its general scope and purpose.

16           The questions of whether a person acted knowingly  
17 willfully and with intent to defraud are questions of fact for  
18 you determine, like any other fact question. These  
19 questions involve the state of mind of the defendant.

20           Direct proof of knowledge and fraudulent intent is  
21 often unavailable. Indeed, it is not typical that a person  
22 writes or states that as of a given time in the past he or she  
23 had committed an act with fraudulent intent. Such direct proof  
24 is not required. The ultimate facts of knowledge and criminal  
25 intent, though subjective, may be established by circumstantial

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1 evidence, based upon a person's outward manifestations, words,  
2 conduct, acts, and all surrounding circumstances disclosed by  
3 the evidence and the rational or logical inferences that may be  
4 drawn therefrom.

5 When deciding whether the defendant possessed or  
6 lacked an intent to defraud, you need not limit yourself just  
7 to what the defendant said, but you may also look at what the  
8 defendant did and what others did in relation to the defendant  
9 and, in general, everything that occurred.

10 The third element of the crime of bank fraud is that a  
11 financial institution in question was federally insured at the  
12 time of the scheme. This simply means that the financial  
13 institution was a bank insured by the Federal Deposit Insurance  
14 Corporation or a credit union with accounts insured by the  
15 National Credit Union Share Insurance Fund during the time  
16 frame alleged in the indictment. The government need not show  
17 that the defendant knew that a financial institution was  
18 federally insured to satisfy this third element.

19 I told you earlier that Mr. Scott in various respects  
20 must have acted knowingly in order to be convicted. In  
21 determining whether Mr. Scott acted knowingly with respect to  
22 the substantive crimes or the objectives of the conspiracy, you  
23 may consider whether he deliberately closed his eyes to what  
24 otherwise would have been obvious. That is what the phrase  
25 "conscious avoidance" refers to.

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As I told you before, acts done knowingly must be the product of a person's conscious intention. They cannot be the result of carelessness, negligence, or foolishness. But a person may not willfully and intentionally remain ignorant of a fact that is material and important to his or her conduct in order to escape the consequences of criminal law. We refer to this notion of intentionally blinding yourself to what is staring you in the face as "conscious avoidance."

An argument by the government of conscious avoidance is not a substitute for proof of knowledge. It is simply another factor that you, the jury, may consider in deciding what a defendant knew. Thus, if you find beyond a reasonable doubt that Mr. Scott was aware that there was a high probability that a fact was so, but that Mr. Scott deliberately and consciously avoided confirming this fact, such as by purposely closing his eyes to it, then you may treat this deliberate avoidance of positive knowledge as the equivalent of knowledge.

With respect to the conspiracy counts, you must also keep in mind that there is an important difference between intentionally participating in the conspiracy, on the one hand, and knowing the specific object or objects of the conspiracy on the other. You may consider conscious avoidance in deciding whether Mr. Scott knew the objective or objectives of a conspiracy. That is, whether Mr. Scott reasonably believed

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1 that there was a high probability that a goal of the conspiracy  
2 was to commit the crimes charged as objects of that conspiracy  
3 and deliberately avoided confirming that fact but participated  
4 in the conspiracy anyway. But conscious avoidance cannot be  
5 used as a substitute for finding that Mr. Scott intentionally  
6 joined the conspiracy in the first place. It is logically  
7 impossible for a defendant to intend and agree to join a  
8 conspiracy if he does not actually know it exists, and that is  
9 the distinction I am drawing.

10           In sum, if you find that Mr. Scott believed there was  
11 a high probability that a fact was so and that the defendant  
12 deliberately and consciously avoided learning the truth of that  
13 fact, you may find that he acted knowingly with respect to that  
14 fact. However, if you find that he actually believed that the  
15 fact was not so, then you may not find that he acted knowingly  
16 with respect to that fact. You must judge from all of the  
17 circumstances and all of the proof whether the government did  
18 or did not satisfy its burden of proof beyond a reasonable  
19 doubt.

20           If the defendant believed in good faith that he was  
21 acting properly, even if he was mistaken in that belief, and  
22 even if others were injured by his conduct, there would be no  
23 crime. The burden of establishing lack of good faith and  
24 criminal intent rests on the government. A defendant is under  
25 no burden to prove his good faith; rather, the government must

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1 prove bad faith or knowledge of falsity beyond a reasonable  
2 doubt. If you find that the government has proven beyond a  
3 reasonable doubt that the defendant acted knowingly and with  
4 the requisite intent, you must find that he did not act in good  
5 faith.

6 Federal law provides rules that govern where, that is,  
7 in what district, a criminal prosecution may be brought by  
8 government. These are known as "venue" rules. In addition to  
9 all of the elements I have described, you must also decide  
10 whether any act in furtherance of each of the charged crimes  
11 occurred within the Southern District of New York, which  
12 includes all of Manhattan, the Bronx, and Westchester,  
13 Rockland, Putnam, Dutchess, Orange and Sullivan Counties. This  
14 means that, with regard to each count, you must decide whether  
15 the crime charged in a particular count, or any act committed  
16 to further or promote the crime, occurred within the Southern  
17 District of New York.

18 I note that on this issue of venue and on this  
19 issue alone, the government need not prove its position beyond  
20 a reasonable doubt. It is sufficient if the government proves  
21 venue by a mere preponderance of the evidence. To prove  
22 something by a preponderance of the evidence means to prove  
23 that it more likely true than not true. It is determined by  
24 considering all of the evidence and deciding which evidence is  
25 more convincing. Thus, the government has satisfied its venue

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1 obligations if you conclude that it is more likely than not  
2 that the crime charged or any act in furtherance of the crime  
3 you are considering for a particular count occurred in the  
4 Southern District of New York.

5 If you find that the government has failed to prove  
6 this venue requirement by a preponderance of the evidence with  
7 respect to any of the charges in the indictment, then you must  
8 acquit the defendant of that charge.

9 Proof of motive is not a necessary element of any of  
10 the crimes with which the defendant is charged. Proof of  
11 motive does not establish guilt, nor does the lack of proof of  
12 motive establish that the defendant is not guilty. If the  
13 guilt of the defendant is shown beyond a reasonable doubt, it  
14 is immaterial what the defendant's motive for the crime or  
15 crimes may be, or whether the defendant's motive was shown at  
16 all. The presence or absence of motive is, however, a  
17 circumstance which you may consider as bearing on the intent of  
18 the defendant.

19 You have heard reference in the arguments of defense  
20 counsel in this case to the fact that certain investigative  
21 techniques were or were not used by law enforcement  
22 authorities. There is no legal requirement that law  
23 enforcement agents investigate crimes in a particular way or  
24 that the government prove its case through any particular  
25 means. While you are to carefully consider the evidence

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1 presented, you need not speculate as to why law enforcement  
2 used the techniques they did or why they did not use other  
3 techniques. The government is not on trial, and law  
4 enforcement techniques are not your concern. Your concern is  
5 to determine whether or not, based on the evidence or lack of  
6 evidence, the guilt of the defendant has been proven beyond a  
7 reasonable doubt.

8 You have heard testimony about evidence seized in  
9 connection with certain searches or seizures conducted by law  
10 enforcement officers, and in particular, of e-mail evidence  
11 obtained pursuant to court approved search warrants. You have  
12 also heard recorded calls and conversations that were offered  
13 into evidence during this trial. I instruct you that all of  
14 the evidence in this case, including evidence obtained pursuant  
15 to searches and the recorded meetings and conversations played  
16 during this trial, was lawfully obtained by the government, and  
17 that no one's rights were violated, and that the use of this  
18 evidence is entirely lawful.

19 Whether you approve or disapprove of the recordings of  
20 calls or conversations or of the uses of searches to obtain  
21 evidence should not enter into your deliberations, because I  
22 instruct you that the use of this evidence is entirely lawful.  
23 Therefore, you must give this evidence your full consideration,  
24 along with all the other evidence in the case, as you determine  
25 whether the government has proved the defendant's guilt beyond

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1 a reasonable doubt.

2 You have also seen exhibits containing written  
3 communications between Mr. Scott and others that were labeled  
4 "attorney-client privilege" or "highly confidential" or the  
5 like. I instruct you that those exhibits were also lawfully  
6 obtained by the government, and that no one's rights were  
7 violated by their use at this trial. This evidence may also be  
8 properly considered by you.

9 You have heard testimony from a government witness who  
10 pled guilty to charges arising out of the same facts as this  
11 case. You are instructed that you are to draw no conclusions  
12 or inferences of any kind about the guilt of Mr. Scott from the  
13 fact that a prosecution witness pled guilty to similar charges.  
14 That witness's decision to plead guilty was a personal decision  
15 about his own guilt. It may not be used by you in any way as  
16 evidence against or unfavorable to Mr. Scott.

17 In connection with the recordings that you have heard,  
18 you were given transcripts of the conversations to assist you.  
19 I told you then, and I remind you now, that the transcripts are  
20 not evidence. It is the recordings that are evidence. The  
21 transcripts were provided as an aid to you while you listened  
22 to the tapes. It is for you to decide whether the transcripts  
23 correctly present the conversations as they are heard on the  
24 tapes you have listened to. If you perceive any differences  
25 between the recording and the transcript, it is the recording

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1 that controls.

2 We have, among the exhibits received in evidence, some  
3 documents that are redacted. "Redacted" means that part of the  
4 document or recording was taken out. You are to concern  
5 yourself only with the part of the item that has been admitted  
6 into evidence. You should not consider any possible reason why  
7 the other part of it has been deleted.

8 You may not draw any inference, favorable or  
9 unfavorable, towards the government or Mr. Scott from the fact  
10 that any person in addition to Mr. Scott is not on trial here.  
11 You may also not speculate in any way as to reason or reasons  
12 why other persons are not on trial. Those matters are wholly  
13 outside your concern, and have no bearing on your function as  
14 jurors.

15 There are several persons whose names you have heard  
16 during the course of the trial but who did not appear here to  
17 testify. I instruct you that each party had an equal  
18 opportunity or lack of opportunity to call any of these  
19 witnesses. Therefore, you should not draw any inferences or  
20 reach any conclusions as to what they would have testified to  
21 had they been called. Their absence should not affect your  
22 judgment in way.

23 You should, however, remember my instruction that the  
24 law does not impose on a defendant in a criminal case the  
25 burden or duty of calling any witness or producing any

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1 evidence.

2                   The defendant did not testify in this case. Under our  
3 Constitution, a defendant has no obligation to testify or to  
4 present any evidence, because it's the government's burden to  
5 prove a defendant guilty beyond a reasonable doubt. The burden  
6 remains with the government throughout the entire trial and  
7 never shifts to a defendant.

8                   A defendant is never required to prove that he is  
9 innocent. Therefore, you must not attach any significance to  
10 the fact that he fact did not testify. No adverse inference  
11 against the defendant may be drawn by you because he did not  
12 take the witness stand, and you may not consider it against the  
13 defendant in any way in your deliberations in the jury room.

14                  There has been evidence that the defendant made  
15 statements to law enforcement authorities. Evidence of these  
16 statements was properly admitted in this case and may be  
17 properly considered by you. You are to give the evidence of  
18 such statements such weight as you feel it deserves in light of  
19 all the evidence. Whether you approve or disapprove of the use  
20 of these statements may not enter into your deliberations. I  
21 instruct you that no one's rights were violated, and that the  
22 government's use of this evidence is entirely lawful.

23                  You are to consider only the evidence in the case.  
24 The evidence in this case is the sworn testimony of the  
25 witnesses, the exhibits received in evidence, and the

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1 stipulations to which the parties have agreed. Anything you  
2 may have seen or heard about this case outside the courtroom is  
3 not evidence and must be entirely disregarded.

4 Exhibits which have been marked for identification but  
5 not received into evidence may not be considered by you as  
6 evidence. Only those exhibits received into evidence may be  
7 considered as evidence.

8 It is for you alone to decide the weight, if any, to  
9 be given to the testimony and stipulations you have heard and  
10 the exhibits you have seen. Testimony that I have excluded or  
11 stricken is not evidence and may not be considered by you in  
12 rendering your verdict.

13 You are not to consider as evidence questions asked by  
14 the lawyers. It is the witnesses' answers that are evidence,  
15 not the questions. Arguments by the attorneys are not evidence  
16 because the attorneys are not witnesses. What they have said  
17 to you in their opening statements and in their summations is  
18 intended to help understand the evidence to reach your verdict.  
19 If, however, your recollection of the evidence differs from the  
20 statements made by the advocates in their opening statements or  
21 summations, it is your recollection that controls.

22 Finally, any statements or rulings that I may have  
23 made do not constitute evidence. Because you are the sole and  
24 exclusive judges of the facts, I do not mean to indicate any  
25 opinion as to what the facts are or what the verdict should be.

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1       The rulings I have made during the trial are not any indication  
2       of my views. Also, you should not draw any inference from the  
3       fact that I may have on occasion asked certain questions of  
4       witnesses. Those questions were intended only to clarify or  
5       expedite, and are not any indication of my view of the  
6       evidence. In short, if anything I have said or done seemed to  
7       you to indicate an opinion relating to any matter you need to  
8       consider, you must disregard it.

9                  There are two types evidence that you may properly use  
10      in reaching your verdict. One type of evidence is called  
11      direct evidence. One kind of direct evidence is a witness's  
12      testimony about something he knows by virtue of his or her own  
13      senses -- something the witness has seen, felt or touched or  
14      heard. Direct evidence may also be in the form of an exhibit.

15                  The other type of evidence is circumstantial evidence.  
16      Circumstantial evidence is evidence that tends to prove one  
17      fact indirectly by proof of other facts. Here is a simple  
18      example of circumstantial evidence:

19                  Assume that when you came into the courthouse this  
20      morning, the sun was shining and it was a nice day. Assume  
21      that the courtroom blinds are drawn, and you cannot look  
22      outside. As you are sitting here, someone walks in with an  
23      umbrella that is dripping wet. Somebody else then walks in  
24      with a raincoat that is also dripping wet. Now, you cannot  
25      look outside the courtroom and you cannot see whether or not it

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1       is raining, so you have no direct evidence of that fact. But  
2       on the combination of the facts that I have asked you to  
3       assume, it would be reasonable and logical for you to conclude  
4       that between the time you arrived at the courthouse and the  
5       time that these people walked in, it had started to rain.

6           That is all there is to circumstantial evidence. You  
7       infer on the basis of reason and experience and common sense  
8       from an established fact the existence or non-existence of some  
9       other fact.

10          Many facts such as a person's state of mind can only  
11       rarely be proved by direct evidence. Circumstantial evidence  
12       is of no less value than direct evidence. You are to consider  
13       both direct and circumstantial evidence. The law makes no  
14       distinction between the two, but simply requires that before  
15       convicting a defendant, you, the jury, must be satisfied of the  
16       defendant's guilt beyond a reasonable doubt from all of the  
17       evidence in the case.

18           I have used the term "infer," and the lawyers in their  
19       arguments have asked you to draw inferences. When you draw an  
20       inference, you conclude, from one or more established facts,  
21       that another fact exists, and you do so on the basis of your  
22       reason, experience, and common sense. The process of drawing  
23       inferences from facts in evidence is not a matter of guesswork,  
24       suspicion, or speculation. An inference is a reasoned, logical  
25       deduction or conclusion that you, the jury, may draw, but are

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1 not required to draw from the facts which have been established  
2 by either direct or circumstantial evidence. In considering  
3 inferences, you should use your common sense and draw from the  
4 facts which you find to be proven whatever reasonable  
5 inferences you find to be justified in light of your  
6 experience.

7 Now for the important subject of evaluating testimony.  
8 How do you evaluate the credibility or believability of the  
9 witnesses? The answer is that you use your plain common sense.  
10 There is no magic formula by which you can evaluate testimony.  
11 You should use the same tests for truthfulness that you would  
12 use in determining matters of importance in your everyday  
13 lives. You should ask yourselves, did the witness impress you  
14 as honest, open and candid? Or was the witness evasive and  
15 edgy as if hiding something? How did he or she appear -- that  
16 is, his or her bearing, behavior, manner and appearance while  
17 testifying? How responsive was the witness to the questions  
18 asked on direct examination and on cross-examination? You  
19 should consider the opportunity the witness had to see, hear  
20 and know about the things about which he or she testified, the  
21 accuracy of his or her memory, his or her candor or lack of  
22 candor, his or her intelligence, the reasonableness and  
23 probability of his or her testimony, its consistency or lack of  
24 consistency with other credible evidence, and its corroboration  
25 or lack of corroboration by other credible evidence.

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In short, in deciding credibility, you should size the witness up in light of his or her demeanor, the explanations given, and all of the other evidence in the case. Always remember to use your common sense, good judgment, and life experience.

Few people recall every detail of every event precisely the same way. A witness may be inaccurate, contradictory, or even untruthful in some respects, and yet entirely believable and truthful in other respects. It is for you to determine whether such inconsistencies are significant or inconsequential.

If you find that a witness is intentionally telling a falsehood, that is always a matter of importance you should weigh carefully. If you find that any witness has willfully testified falsely as to any material fact, that is as to an important matter, the law permits you to disregard completely the entire testimony of that witness upon the principle that one who testifies falsely about one material fact is likely to testify falsely about everything. You are not required, however, to consider such a witness as totally unbelievable. You may accept so much of his or her testimony as you deem true and disregard what you feel is false.

You are not required to accept testimony even though the testimony is uncontradicted and the witness's testimony is not challenged. You may decide because of the witness's

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1 bearing or demeanor or because of the inherent improbability of  
2 the testimony, or for other reasons sufficient to yourselves,  
3 that the testimony is not worthy of belief. On the other hand,  
4 you may find, because of a witness's bearing and demeanor and  
5 based upon your consideration of all the other evidence in the  
6 case, that witness is truthful.

7 By the processes which I have just described, you, as  
8 the sole judges of the facts, decide which of the witnesses you  
9 will believe, what portions of their testimony to accept, and  
10 what weight you will give to it.

11 In deciding whether to believe a witness, you should  
12 also specifically note any evidence of bias, hostility, or  
13 affection that the witness may have toward one of the parties.  
14 Likewise, you should consider evidence of any other interest or  
15 motive that the witness may have in cooperating or not  
16 cooperating with a particular party. If you find any such  
17 bias, hostility, affection, interest, or motive, you must then  
18 consider whether or not it affected or colored the witness's  
19 testimony.

20 You should also take into account any evidence that a  
21 witness may benefit or suffer in some way from the outcome of a  
22 case. Such interest in the outcome may create a motive to  
23 testify falsely and may sway a witness in a way that advances  
24 his or her own interests. Therefore, if you find that any  
25 witness whose testimony you are considering may have an

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1 interest in the outcome of this trial, then you should bear  
2 that factor in mind when evaluating the credibility of his or  
3 her testimony and accept it with great care.

4 Keep in mind, though, that it does not automatically  
5 follow that testimony given by an interested witness is to be  
6 disbelieved. There are many people who, no matter what their  
7 interest in the outcome of a case may be, would not testify  
8 falsely. It is for you to decide, based on your own  
9 perceptions and common sense, to what extent, if at all, the  
10 witness's bias or interest has affected his or her testimony.  
11 You are not required to disbelieve any interested witness; you  
12 may accept as much of his or her testimony as you deem  
13 reliable, and reject as much as you deem unworthy of  
14 acceptance.

15 You have heard a witness who testified that he was  
16 actually involved in the crimes charged in the indictment.  
17 Experience will tell that you the government frequently must  
18 rely on the testimony of witnesses who admit participating in  
19 the alleged crimes at issue. The government must take its  
20 witnesses as it finds them, and frequently must use such  
21 testimony in a criminal prosecution because otherwise it would  
22 be difficult or impossible to detect and prosecute wrongdoers.

23 The testimony of such accomplices and cooperating  
24 witnesses is properly considered by the jury. If accomplices  
25 could not be used, there would be many cases in which there was

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## CHARGE

1 real guilt and conviction should be had, but in which  
2 convictions would be unobtainable.

3 For these very reasons, the law allows the use of  
4 accomplice testimony. Indeed, it is the law in federal courts  
5 that the testimony of an accomplice may be enough in itself for  
6 conviction, if the jury believes that the testimony establishes  
7 guilt beyond a reasonable doubt.

8 Because of the possible interest an accomplice may  
9 have in testifying, the accomplice's testimony should be  
10 scrutinized with special care and caution. The fact that a  
11 witness is an accomplice can be considered by you as bearing  
12 upon his or her credibility. However, it does not follow that  
13 simply because a person has admitted to participating in one or  
14 more crimes, he or she is incapable of giving a truthful  
15 version of what happened.

16 Like the testimony of any other witnesses, accomplice  
17 witness testimony should be given such weight as it deserves in  
18 light of the facts and circumstances before you, taking into  
19 account the witness's demeanor, candor, the strength and  
20 accuracy of a witness's recollection, his or her background,  
21 and the extent to which his or her testimony is or is not  
22 corroborated by other evidence. You may consider whether the  
23 accomplice witnesses, like any other witnesses called in this  
24 case, have an interest in the outcome of the case, and if so,  
25 whether it has affected their testimony.

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1            You heard testimony from a witness who has an  
2 agreement with the government. I must caution you that it is  
3 of no concern of yours why the government made an agreement  
4 with a witness. Your concern is whether a witness has given  
5 truthful testimony here in this courtroom before you.

6            In evaluating the testimony of accomplice witnesses,  
7 you should ask yourselves whether the accomplices would benefit  
8 more by lying or by telling the truth. Was his or her  
9 testimony made up in any way because he or she believed or  
10 hoped that he or she would somehow receive favorable treatment  
11 by testifying falsely? Or did he or she believe that his or  
12 her interests would be served by testifying truthfully? If you  
13 believe that the witness was motivated by hopes of personal  
14 gain, was the motivation one which would cause him or her to  
15 lie, or was it one which would cause him or her to tell the  
16 truth? Did this motivation color his or her testimony?

17           If you find that the testimony was false, you should  
18 reject it. However, if, after a cautious and careful  
19 examination of the accomplice witness's testimony and demeanor  
20 upon the witness stand, you are satisfied that the witness told  
21 the truth, you should accept it as credible and act upon it  
22 accordingly.

23           In this case, I permitted a witness to express  
24 opinions about certain matters that are at issue. Such  
25 testimony, which we refer to as "expert testimony," was

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1 presented to you on the theory that someone who is experienced  
2 and knowledgeable in the field can assist you in understanding  
3 evidence or in reaching an independent decision on the facts.  
4 In weighing expert testimony, you may consider that witness's  
5 qualifications, his opinions, the reasons for testifying, as  
6 well as all of the other considerations that ordinarily apply  
7 when you are deciding whether or not to believe a witness's  
8 testimony. You may give the opinion testimony whatever weight,  
9 if any, you find it deserves in light of all of the evidence in  
10 the case.

11 You should not, however, credit the opinion testimony  
12 just because I allowed the witness to testify as an expert, nor  
13 should you substitute the expert's opinion for your own reason,  
14 judgment and common sense. The determination of the facts in  
15 this case rests solely with you.

16 You have heard testimony of law enforcement officials.  
17 The fact that a witness may be or may have been employed by the  
18 government as a law enforcement official or employee does not  
19 mean that his or her testimony is necessarily deserving of more  
20 or less consideration or greater or lesser weight than that of  
21 other witnesses.

22 At the same time, in considering the credibility of  
23 such a witness, you are entitled to consider whether the  
24 testimony may be colored by a personal or professional interest  
25 in the outcome of the case.

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1           It is your decision, after reviewing all the evidence,  
2 whether to accept the testimony of the law enforcement or  
3 government employee witnesses and to give that testimony  
4 whatever weight you find it deserves.

5           There has been testimony before you about the use of  
6 informants or confidential sources. Informants or confidential  
7 sources are frequently used by the government to obtain leads  
8 and to gain introduction to people suspected of violating the  
9 law. There are certain types of crimes where, without the use  
10 of informants or confidential sources, detection would be  
11 extremely difficult. Because this law enforcement technique is  
12 entirely lawful, your personal view on its use, whether you  
13 approve or disapprove is beside the point and must not affect  
14 your evaluation of the evidence in the case.

15           Let me put it another way. If you are satisfied  
16 beyond a reasonable doubt that the defendant committed the  
17 charged offense that you are considering, you should find him  
18 or her guilty even though you believe that his or her  
19 apprehension came about in some measure by the government's use  
20 of informants or confidential sources.

21           You have heard evidence during the trial that  
22 witnesses have discussed the facts of the case and their  
23 testimony with lawyers before the witnesses appeared in court.  
24 Although you may consider that fact when you are evaluating a  
25 witness's credibility, you should keep in mind that there is

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nothing either unusual or improper about a witness meeting with lawyers before testifying so that the witness can be aware of the subjects he will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without having had such a consultation beforehand.

Again, the weight you give to the fact or the nature of the witness's preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should find the facts in favor of the side offering the most witnesses. The burden of proof is always on the government. The defendant is not required to call any witnesses or offer any evidence since he is presumed to be innocent.

You have heard testimony that the defendant made statements in which he claimed that his conduct was consistent with innocence and not with guilt. The government claims these statements in which the defendant attempted to exculpate himself are false.

If you find that the defendant gave a false statement in order to divert suspicion from himself, you may infer -- but

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1 you need not -- that the defendant believed that he was guilty.  
2 You may not, however, infer on the basis of this alone that the  
3 defendant is in fact guilty of the crimes for which he is  
4 charged.

5 Whether or not the evidence as to a defendant's  
6 statements show that the defendant believed he was guilty, and  
7 the significance, if any, to be attached to any such evidence  
8 are matters for the jury to decide.

9 During the course of this trial, there has been  
10 testimony that the defendant has a reputation for honesty and  
11 truthfulness in his community. That testimony bears upon the  
12 defendant's character. Character testimony should be  
13 considered together with all the other evidence in the case in  
14 determining the guilt or innocence of the defendant.

15 (Continued on next page)

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1                 THE COURT: (Continuing) Evidence of good character  
2 may in itself give you a reasonable doubt where, without such  
3 evidence, no reasonable doubt would have existed. But, if on  
4 all the evidence, including the character evidence, you are  
5 satisfied beyond a reasonable doubt that the defendant is  
6 guilty, a showing that he previously enjoyed a reputation of  
7 good character does not justify or excuse the offense and you  
8 should not acquit the defendant merely because you believe he  
9 is a person of good repute.

10                 The testimony of character witnesses is not to be  
11 taken by you as the witness's opinion as to the guilt or  
12 innocence of a defendant. Indeed, the character witnesses  
13 testified that he was not aware of the facts of this particular  
14 case. The guilt or innocence of the defendant is for you alone  
15 to determine, and that should be based on all of the evidence  
16 you have heard in the case.

17                 Now, some of the exhibits that were admitted into  
18 evidence were in the form of charts and summaries. For these  
19 charts and summaries that were admitted into evidence, you  
20 should consider them as you would any other evidence.

21                 There have also been a number of summary charts and  
22 exhibits which were shown to you but which were not admitted  
23 into evidence. At the time that they were shown to you, I had  
24 noted this fact to you. For these charts and exhibits that  
25 were not admitted into evidence, they severe merely as

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1 summaries and analyses of testimony and documents in the case  
2 and are here to act as visual aids for you. It is the  
3 underlying evidence and the weight which you attribute to it  
4 that gives value and significance to these charts. To the  
5 extent that the charts conform to what you determine the  
6 underlying facts to be, you should accept them. To the extent  
7 the charts differ from what you determine the underlying  
8 evidence to be, you may reject them.

9           In this case you have heard evidence in the form of  
10 stipulations of testimony. A stipulation of testimony is an  
11 agreement between the parties that, if called as a witness, the  
12 person would have given certain testimony. You must accept as  
13 true the fact that the witness would have given that testimony.  
14 However, it is for you to determine the effect to be given that  
15 testimony.

16           In addition, you have also heard evidence in the form  
17 of stipulations of fact. A stipulation of fact is an agreement  
18 between the parties that a certain fact is true. You must  
19 regard such agreed-upon facts as true.

20           Under your oath as jurors you are to evaluate the  
21 evidence calmly and objectively, without sympathy or prejudice.  
22 You are to be completely fair and impartial. You are to be  
23 guided solely by the evidence in this case and the crucial  
24 bottomline question that you must ask yourselves as you sift  
25 through the evidence is: Has the government proven the

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elements of the crimes charged beyond a reasonable doubt?

It would be improper for you to consider, in deciding the facts of the case, any personal feelings you may have about the race, religion, national origin, sex, disability, or age of any party or witness or any other such irrelevant factor. It would be equally improper for you to allow any feelings you might have about the nature of the crimes charged to interfere with your decision making process. All parties are entitled to the same fair trial at your hands. They stand equal before the law and they are to be dealt as equals in this court. If you let fear or prejudice or bias or sympathy interfere with your thinking, there is a risk that you will not arrive at a true and just verdict.

If you have a reasonable doubt as to the defendant's guilt with respect to a particular count, you should not hesitate to render a verdict of acquittal on that charge. But, on the other hand, if you should find that the government has met its burden of proving the defendant's guilt beyond a reasonable doubt with respect to a particular count, you should not hesitate because of sympathy or any other reason to render a verdict of guilty on that charge.

In determining whether the government has proven the charges beyond a reasonable doubt, you should not consider the question of possible punishment, in the event you are to find the defendant is guilty as charged. The duty of imposing a

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1 sentence rests exclusively upon the court. Your function is to  
2 weigh the evidence in the case and to determine whether or not  
3 the defendant is guilty beyond a reasonable doubt solely upon  
4 the basis of such evidence.

5 Therefore, I instruct you that you cannot allow a  
6 consideration of the punishment which may be imposed upon a  
7 defendant, if he is convicted, to influence your verdict in any  
8 way, or in any sense enter into your deliberations.

9 Now, concerning deliberations. You will soon retire  
10 to decide the case. It is your duty to consult with one  
11 another and to deliberate with a view to reaching an agreement.  
12 Each of you must decide the case for yourself, but you should  
13 do so only after consideration of the case with your fellow  
14 jurors. Your verdict and the answers to each of the questions  
15 on the verdict form must be unanimous. Discuss and weigh your  
16 respective opinions dispassionately, without sympathy,  
17 prejudice, or favor toward either party, and adopt that  
18 conclusion which in your good conscience appears to be had in  
19 accordance with the truth.

20 As you deliberate, please listen to the opinions of  
21 your fellow jurors and ask for an opportunity to express your  
22 own views. Every juror should be heard. No one juror should  
23 hold center stage in the jury room and no one juror should  
24 control or monopolize the deliberations. You should all listen  
25 to one another with courtesy and respect. If, after stating

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1 your view, and if after listening to your fellow jurors, you  
2 become convinced that your view is wrong, do not hesitate  
3 because of stubbornness or pride to change your view. On the  
4 other hand, do not surrender your honest convictions and  
5 beliefs concerning the weight or effect of the evidence solely  
6 because of the opinions of your fellow jurors or because you  
7 are outnumbered or for the mere purpose of returning a verdict.  
8 Your final vote must reflect your conscientious belief as to  
9 how the issues should be decided and your verdict must be  
10 unanimous.

11 You are not to discuss the case until all jurors  
12 are present. Nine or ten or even eleven jurors together is  
13 only a gathering of individuals. Only when all of the jurors  
14 are present do you constitute a jury, and only then may you  
15 deliberate.

16 If any of you took notes during the course of the  
17 trial, you should not show your notes or discuss your notes  
18 with any other juror during your deliberations. Any notes you  
19 have taken are to be used solely to assist you and are not a  
20 substitute for the transcript of the testimony, which has been  
21 taken down verbatim by the court reporters. The fact that a  
22 particular juror has taken notes entitles that juror's views to  
23 no greater weight than those of any other juror. And please  
24 remember that if notes were taken during the lawyers'  
25 arguments, the lawyers' arguments are not evidence.

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Now the documentary but not the physical or audiovisual exhibits will be sent to you in the jury room. If you want any of the testimony read back, that can be arranged. Please appreciate that it is not always easy to locate the testimony that you might want, so be as specific as possible as to what witness and what portion of that witness's testimony you would like to hear.

Any communication with the court should be made in writing, signed by your foreperson and given to the marshal, who will be outside the jury room while you deliberate. I will respond to any questions or requests you have as promptly as possible, either in writing or by having you return to the courtroom so I can speak with you in person. In any event, do not tell me or anyone else how the jury stands on any issue until after a unanimous verdict is reached. So do not ever indicate, in a note or otherwise, what the vote is or which way the majority is leaning or anything like that.

Your first task when you retire to deliberate is to select by your own vote one of you to sit as your foreperson. You are free to select any foreperson you like. The foreperson does not have any more power or authority than any other juror, and his or her vote or opinion does not count for any more than any other juror's vote or opinion. The foreperson is merely your spokesperson to the court. The foreperson will preside over your deliberations and will be your spokesperson here in

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court. He or she will send out any notes, and when the jury has reached a verdict, he or she will notify the marshal that the jury has reached a verdict, and he or she will come into open court and give the verdict. During your deliberations, please communicate with the court only in writing and only through your foreperson.

The foreperson will receive a verdict form on which to record your verdict. It lists the questions that you must resolve based on the evidence and the instructions that I have given you. And when the foreperson has completed the form, he or she must sign his or her name, and form will be marked as a court exhibit.

Now the most important part of this case, Members of the Jury, is the part that you as jurors are about to play as you deliberate on the issues of fact. It is for you, and you alone, to decide whether the government has proved beyond a reasonable doubt each of the essential elements of the crimes with which Mr. Scott is charged. If the government has succeeded on a particular count, your verdict should be guilty as to that count; if it has failed, your verdict should be not guilty. I know you will try the issues that have been presented to you according to your oath that you have taken as jurors. In that oath you promised that you would well and truly try the issues in this case and render a true verdict according to the law and the evidence, impartially and fairly,

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1 without prejudice or sympathy. Your function is to weigh the  
2 evidence in the case and determine whether the government has  
3 proved beyond a reasonable doubt the guilt of the defendant of  
4 the crimes charged in the indictment.

5 As I previously stated, your verdict must be  
6 unanimous. Again, if at any time you are not in agreement, you  
7 are not to reveal the standing of the jurors -- that is, the  
8 split of the vote -- to anyone including me at any time in your  
9 deliberations. At this time, the regular jurors will begin  
10 their deliberations or tomorrow morning. Nevertheless, the  
11 alternate jurors are not quite excused. While the jury  
12 conducts its deliberations you do not have to be in court but  
13 you should give Ms. Rivera your phone numbers where you can be  
14 reached, because it is possible that one or more of you could  
15 be needed to deliberate if a regular juror is unable to  
16 continue.

17 Ms. Rivera will call you if deliberations are  
18 completed without our needing you so that you will know that  
19 you are completely finished. Between now and then, you must  
20 continue to observe all of the restrictions I have instructed  
21 you on throughout the trial. That is, you must not discuss  
22 this case with anyone, including your fellow alternate jurors,  
23 the regular jurors, other people involved in the trial, members  
24 of your family, friends, coworkers, or anyone else. You may  
25 not communicate with anyone about the case on your cellphone,

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1 through e-mail, text messaging or by way of other social  
2 networking websites such as Facebook and LinkedIn. Do not at  
3 all speak with any of the parties, the witnesses, or the  
4 attorneys. Do not permit anyone to discuss the case with you.  
5 Do not friend or follow one another or any participant in the  
6 trial on Facebook, Twitter, LinkedIn or any social networking  
7 website. Do not even remain in the presence of anyone  
8 discussing the case. If anyone approaches you and tries to  
9 talk to you about the case, please report that to me, through  
10 Ms. Rivera immediately.

11                   Do not listen to or watch or read any news reports  
12 concerning this trial if there were to be any; do not do any  
13 research on the internet or otherwise; and do not visit any  
14 places mentioned during the trial or conduct any investigation  
15 of your own, including on social media. Should you be asked to  
16 participate in reaching a verdict in the case, the only  
17 information you will be allowed to consider in deciding this  
18 case is what you learned here in the courtroom during the  
19 trial.

20                   I'm sorry that you will probably miss the experience  
21 of deliberating with the jury, but the law provides for a jury  
22 of twelve persons in this case. So, before I let you go, I  
23 just need to have a word with the attorneys at sidebar and I'll  
24 be right with you.

25                   (At sidebar)

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1                   THE COURT: Any substantive misstatements?

2                   MR. DiMASE: Not a misstatement but one addition that  
3 I didn't realize hadn't made it into the final charge. I  
4 apologize. I think the parties agree that on page 21 in the  
5 fourth paragraph under evidence of a scheme or artifice that at  
6 the end of the phrase "intentional concealment of material  
7 facts," the phrase "which made what was said under the  
8 circumstances misleading."

9                   THE COURT: I thought we put that in there.

10                  MR. DiMASE: I know that the Court did discuss adding  
11 it and agreed to add it. I just don't see it in the charge.

12                  MR. DEVLIN-BROWN: We didn't see it there either and  
13 hoped it would be added. I think we are both in agreement. It  
14 could be are read, that paragraph, and then corrected maybe  
15 overnight.

16                  MR. DiMASE: Corrected in whatever is given to the  
17 jury when they're deliberating. Thank you.

18                  (In open court)

19                  THE COURT: Forgive me, ladies and gentlemen. There  
20 was something that I meant to include and it will be included.  
21 We'll give you an updated version. At page 21. In the last  
22 full paragraph than begins "In order to prove the second  
23 theory," if you go to the third line from the bottom. The last  
24 sentence should read: Deceitful statements of half-truth, the  
25 intentional concealment of material facts which made what was

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1 said under the circumstances misleading and the expression of  
2 an opinion not honestly entertained may constitute false or  
3 fraudulent representations under the statute. OK. So the part  
4 that was missing was "the intentional concealment of material  
5 facts which made what was said under the circumstances  
6 misleading." And I will get you an updated version. OK. And  
7 with that, Ms. Rivera.

8 (Marshal sworn)

9 THE COURT: Now, ladies and gentlemen, I assume that  
10 you will not want to begin deliberations this evening.  
11 You can if you want to but I assume that you will not.

12 Now I will stick with our original schedule, 9:30 to  
13 2:30. So don't begin deliberating until all of you are in the  
14 room. And if one of you has to go outside to make a phonecall  
15 or smoke a cigarette or whatever, then you should stop  
16 deliberating until all twelve of you are in the room. We will  
17 not bring you out to make sure all twelve of you are here.  
18 We'll know. But you can stay as long as you want. You don't  
19 have to leave at 2:30. You can stay as long as you want. I  
20 think we'll have a regular lunch starting tomorrow.

21 If you have a note we will -- I will make sure that we  
22 get back to you as soon as possible but I will be giving the  
23 lawyers a lunch period, so approximately from 12:30 to 1:30, if  
24 you have a note, it may take us a little longer to get back to  
25 you, but we'll get back to you as soon as we can. Until then

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1 have a wonderful evening. Do not discuss the case until you  
2 are all present in the jury room tomorrow.

3 (At 3:13 p.m., the jury was excused to commence  
4 deliberations at 9:30 November 21, 2019)

5 THE COURT: OK. You can all sit down or leave. By  
6 the way, I told the jury that I would give you guys a lunch  
7 hour. I lied. If we get a note you should be like within five  
8 minutes, OK. Unless there's anything else.

9 MR. DEVLIN-BROWN: No, your Honor.

10 MR. DiMASE: No.

11 (Adjourned to November 21, 2019 at 9:30 a.m.)

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